United States Court of Appeals

for the Second Circuit

APPENDIX

76-1328

ORIGINAL

B P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

against

WILLIAM CAHN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.

Volume IV—Pages 1431 to 1981.

FARRELL, FRITZ, CAEMMERER & CLEARY, P. C.
Attorneys for Defendant-Appellant
374 Hillside Avenue
Williston Park, N. Y. 11596
(516) 741-1111

DAVID TRAGER
United States Attorney for the Eastern District of New York
U. S. Court House
225 Cadman Plaza
Brooklyn, N. Y. 11201
(212) 330-7550

UNITED STATES COURT OF APPEALS
FILED
OCT 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

(9770)

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

	Page
Docket Entries	2a
Indictment	11a
Superseding Indictment	30a
Grand Jurys Proposed Amendment to Superseding Indictment	45a
Defendant's Notice of Motion to Dismiss Indictment and Other Relief Requested	48a
Defendant's Memorandum in Support of Motion to Dismiss Indictment	50a
Government's Memorandum of Law in Opposition to Defendant's Motions For Dismissal and Severance	88a
Affidavit of Edward R. Korman in Opposition to Defendant's Motion to Schedule Trial in Westbury Annex	113a
Exhibit A, Annexed to Affidavit of Edward R. Korman	118a
Exhibit B, Annexed to Affidavit of Edward R. Korman	122a
Exhibit C, Annexed to Affidavit of Edward R. Korman	124a
Defendant's Reply Memorandum in Support of Motion to Dismiss Indictment and Other Relief Requested	126a

Page

Exhibit A, Annexed to Defendant's Reply Memorandum 150a

Oral Argument and Decision on Defendant's Motions 155a

Minutes of Pre-Trial Conference 198a

Transcript of Testimony 1

Opening by Mr. Druker 5

Opening by Mr. Cahn 17

Motions 577, 1657

Summation by Mr. Druker 1674

Summation by Mr. Cahn 1736

Rebuttal by Mr. Druker 1802

Charge of the Court 1828

Exceptions and Requests to Charge 1879

Verdict 1899

Motion to Set Aside Verdict 1901

Court's Exhibit 2--Defendant's Requests to Charge 1903

Notice of Motion to Set Aside Verdict or For a New Trial 1922

Defendant's Memorandum in Support of Motion to Dismiss the Indictment and Other Requested Relief 1923

Decision on Motion to Set Aside Verdict and Minutes of Sentence 1957

Judgment Appealed From 1979

Notice of Appeal 1980

TESTIMONY.

WITNESSES FOR GOVERNMENT:

	Page
Bjorklund, John:	
Direct	1602
Cross	1620
Redirect	1634
Bloom, Joanne:	
Direct	1531
Cross	1539
Briggs, Ron:	
Direct	359
Cross	366
Redirect	372
Recross	375
Brogan, Dennis:	
Direct	1571
Christ, M. Hallsted.	
Direct	41
Cross	62
Redirect	87
Recross	97

Page

Debrowski, Dennis:

Direct 253

Cross 273

Redirect 285

Recross 287

Devine. Henry P.:

Direct 1592

Cross 1598

Dorcas, John:

Direct 1573

Cross 1579

Fertitta, Robert:

Direct 451

Cross 464

Redirect 493

Recross 501

Haynes, Erna:

Direct 376

Cross 380

Redirect 388

Healy, Patrick:

Direct 112

Cross 160

Redirect 200

	Page
Hoy, Vernon L.:	
Direct	526
Cross	540
Redirect	551
Recross	555
Iwanago, Mario:	
Direct	419
Cross	430
Karrasqualo, Luis:	
Direct	437
Cross	443
Redirect	450
Recalled:	
Cross	561
Redirect	565
Recross	569
Redirect	573
Recross	575
Maston, Gladys:	
Direct	293
Cross	321
Redirect	343
Recross	351
Re-redirect	354

Page

Papademus, George:

Direct 1548

Cross 1554

Redirect 1568

Recross 1570

Spinnato, Joseph E.:

Direct 214

Cross 236

Theodore, Ira:

Direct 392

Cross 405

Redirect 415

Recalled:

Direct 506

Cross 510

Tolkin, Arnold:

Direct 1491

Cross 1504

WITNESSES FOR DEFENDANT:

	Page
Bernstein, Richard:	
Direct	1402
Cahn, William:	
Direct	727
Recalled:	
Direct	880
Recalled:	
Direct	910
Recalled:	
Direct	1013
Recalled:	
Direct	1066
Recalled:	
Cross	1132
Recalled:	
Cross	1218
Redirect	1366
Recross	1373
Redirect	1377
Carlino, Joseph F.:	
Direct	1115
Cross	1116

Page

Colin-Green, Robin:

Direct 1443

Cross 1445

Collins, Patricia D.:

Direct 987

Cross 990

Delin, Richard C.:

Direct 1387

Evans, Jessie James:

Direct 1397

Garanfis, Nicholas G.:

Direct 1400

Golden, Elliott:

Direct 908

Recalled:

Direct 1450

Hughes, Trevor Lloyd:

Direct 1210

Cross 1213

Kaplan, Helen:

Direct 1389

Page

Kelly, Paul:

Direct 1004

Cross 1006

Kligfeld, Bernard:

Direct 1415

Kornacki, Lillian:

Direct 1393

Lang, John:

Direct 1417

Cross 1427

Redirect 1437

Recross 1440

Levine, Emanuel:

Direct 1009

Cross 1011

Linning, John:

Direct 1408

Cross 1410

Mackston, Jack:

Direct 1441

Melton, Edward L.:

Direct 1404

Page

Middleton, Lee:

Direct 1410

Cross 1413

Munoz, Chago:

Direct 1118

Cross 1120

Redirect 1123

O'Connor, James A.:

Direct 1391

Pette, Nicholas M.:

Direct 993

Cross 995

Randall, William:

Direct 1046

Cross 1052

Rizzi, Salvatore:

Direct 1394

Robbins, Alfred S.:

Direct 877

Cross 878

Roberts, Burton B.:

Direct 1406

Page

Roncallo, Angelo:

Direct 603

Cross 611

Redirect 622

Salerno, Ralph S.:

Direct 1640

Cross 1648

Redirect 1654

Santarelli, Donald E.:

Direct 1204

Solomon, Jerome E.:

Direct 1124

Cross 1127

Redirect 1130

Spahr, Charles:

Direct 632

Cross 659

Spinnato, Joseph E.:

Direct 689

Cross 697

Redirect 708

Recross 714

Page

Sullivan, Donald:

Direct 1396

Ventre, Anthony:

Direct 1448

Vergari, Carl:

Direct 996

Cross 998

Redirect 1000

Widlitz, Paul J.:

Direct 1001

Cross 1002

EXHIBITS.

GOVERNMENT'S EXHIBITS:

		Admitted page	Printed page
1.	Claim	54	1983
2.	Claim	54	1994
3.	Claim	54	2005

DEFENDANT'S EXHIBITS:

A.	Redeposit form	108	2010
C.	Affidavits	787	2011
H.	Affidavits	787	2034
I.	Photograph	654	2042
J.	Internal correspondence dated September 6, 1973	658	2043
K.	Affidavits	778	2044
L.	Copy of case sheet	780	2070

Q Well, you did or you didn't?

A I could have done both. At one time I could have and another time, I couldn't have.

Q As a matter of fact, after you started travelling with Mr. Cahn, your paychecks went up substantially, did they not, as a result of overtime?

A As a result of travelling?

Q Yes, sir.

A I wouldn't say substantially, no.

Q Well, did they go up five or $10,000 a year from what they had been before that?

A No, sir.

Q How long have you been a sergeant?

A Since 1969.

Q And do you have periodic raises?

A Yes.

Q Cost of living raises or whatever?

A Not cost of living, no, sir.

Q Did you get any raises in 1970 or '71 or '72 that you can recall?

A I believe so, yes.

Q Approximately how much that you can recall --

MR. WILLIAM CAHN: I don't see any relevancy.

THE COURT: I think it is proper. I will

overrule the objection.

Q Our raises were usually eight to 10 per cent a year.

Q When did you first start travelling with Mr. Cahn -- I'm sorry -- when did you first start travelling with Mr. Cahn?

A I can't recall the exact date.

Q In or around 1971?

A I believe it was in 1970.

Q As a matter of fact, Mr. Lang, didn't you double your salary just about between 1969 and 1972?

A You got me.

Q I will show you some documents and see if these refresh your recollection.

(Documents handed to witness.)

(Pause.)

A Which ones do you want me to refer to -- '69 and '70, '72.

Q Didn't you go from about thirteen thousand a year in 1969, to about $26,000 a year in 1972?

A What was your last year?

Q 1972.

A Yes, sir, that's correct.

Q And didn't a large part of that increase consist

of overtime you received as a result of working with Mr. Cahn?

A As a result of working with or traveling with?

Q Working with, first of all.

A Yes, sir.

Q And wasn't a substantial part of that overtime claimed while on trips with Mr. Cahn outside New York State?

A Comparatively to the rest of the year?

Q Yes, sir.

A No, sir.

Q A couple of thousand dollars a year claimed on these trips?

A It is claimed in hours. I couldn't give you dollars.

Q Some of this would be on trips to Reno and Las Vegas?

A I am sure you must have the overtime records and you can see the hours put in on the trip --

Q I don't have the records.

I am asking you.

A I would say the overtime traveling was maybe 10 per cent of a year compared to the rest of the overtime for that year.

MR DRUKER: May this be marked for identification, your Honor?

THE COURT: Mark it.

THE CLERK: Document marked Government Exhibit 79 for Identification.

(So marked.)

BY MR. DRUKER:

Q I will ask youagain if the name Alan Magid rings any bells for you, Sergeant?

A No.

Q Showing you now Government Exhibit 79 for Identification, I ask you to read to yourself a couple of paragraphs or the first page or so if you wish, and see whether or not that refreshes your recollection.

(Document handed to witness.)

(Pause.)

A Yes, sir.

Q Now, you recall Alan Magid?

A Yes! I believe this was Mr. Bjorgland's informant.

Q And he was providing information relating to that Long Island Jewelry Exchange robbery back in June of '70, was he not?

A I believe so.

Q More specifically on or about June 25th?

A You talking about the date on here?

Q Yes, sir.

A According to this date, yes, sir.

Q And had you heard at all by June 23, 1970, or thereabouts that Joe Colombo had been called in to arbitrate the dispute of the proceeds of that robbery?

A I heard it but I couldn't tell you want date I heard it.

Q So this wouldn't have been new news on or about June 23rd, would it?

A Well, I don't remember the date, sir.

Q Back in January, 1970, and I realize this goes back aways, would you have been surprised to hear that Paul Vairo was a prime mover or hidden principal in the Golden Dome Restaurant?

A I can't answer that, sir.

Q If I suggested there were articles in Newsday in December, 1969, and earlier regarding that, would that refresh your recollection as to when you first heard it?

A I would have to see the article.

Q Showing you now Government 68 and 69, which are articles dated December 23, 1969, and January 13,

1970, I ask you to take a look at those and particularly the portions underlined in red.

(Exhibit handed to witness.)

(Pause.)

A Okay.

Q And does that refresh your recollection as to whether or not you had heard prior to 1970 that Paul Vairo was involved in the Golden Dome?

A I recall the case but as to whether he heard about it --

Q No. As to whether you heard it, sir.

A From Paul Vairo?

Q I will withdraw the question, Sergeant.

Do you remember there came a time when two individuals named Mike Adamo and Frank Mari supposedly disappeared?

A Yes, sir.

Q They were alleged to be a couple of organized crime figures?

A Yes, sir.

Q Do you recall approximately when their disappearance was?

A No, sir.

Q If I suggested the fall of 1969, would that

refresh your recollection at all, sir?

A No, sir.

Q Were you involved in receiving any intelligence from informants or others in the Police Department related to that case?

A Yes.

Q And back in September, October or November of 1969, had you heard allegations or received information to the effect that Mari and Adamo were murdered pursuant to a mob contract?

A That was the general information that was on the street.

MR. DRUKER: Thank you, Sgt. Lang.

REDIRECT EXAMINATION

BY MR. WILLIAM CAHN:

Q Sgt. Lang, on what basis did the defendant William Cahn run his office?

A Excuse me, sir.

Q On what basis did the defendant William Cahn run the office of the district attorney?

MR. DRUKER: Objection to the broadness and, number two, the competency of the witness to answer.

THE COURT: Otherwise, it's leading.

Let the witness answer if he can.

A On a need-to-know basis.

Q What do you mean?

A If someone didn't need to know anything about the running of the office, they were not told.

Q And therefore would it be unusual for you to go on a particular trip and not know the purpose of the trip?

A No, sir, it wouldn't be unusual at all.

Q You were shown Government Exhibit 79 for Identification in an effort to refresh your recollection about a man by the name of Magid; is that correct?

A Yes, sir.

Q Prior to that, you didn't remember his name, did you?

A No, sir.

Q You told the Court, after reading that, that he was Brody Bjorgland's informant?

A Yes, sir.

Q Is that unusual for you not to know the name of another individual's informant?

A No, sir.

Q Now, you said something about the story on the street about Mari and Adamo.

A Yes.

Q That was a story on the street?

A Right.

Q That's rumor, isn't it?

A Yes, sir.

Q There were no facts to back that up, were there, that you knew of?

A No, sir, none at all.

Q Insofar as your overtime is concerned, isn't it a fact, Sgt. Lang, that I asked, as a favor to me, not to charge overtime on your trips?

A Yes, sir.

(Continued on next page.)

L fls.

T3 R1

REDIRECT EXAMINATION

BY MR. CAHN CONTINUING:

Q And the overtime to which Mr. Drucker referred, wasn't that in reference to investigation that you yourself took upon yourselfas a result of information or discussions in reference to defendant's exhibit L that I gave you?

MR. DRUKER: Your Honor, object to the leading.

THE COURT: Sustained.

Q I show you defendant's exhibit L and ask you if much of the overtime to which you referred had reference to investigations insofar as the information in that exhibit is concerned?

A Yes sir.

MR. CAHN: No further questions.

RECROSS EXAMINATION

BY MR. DRUKER:

Q Sergeant Lang, relating to defendant's L in evidence, did you open many cases as a result of the information that is contained on there?

A I'd have to check the records for that, sir.

Q You have read it over, haven't you?

A Yes sir.

Q Do you have any specific recollection of opening

any cases as a result of that information?

A I would still have to check. We have had cases with the same individuals prior.

Q Isn't it a fact that most of those pieces of information are related to cases which had long previously been opened in your office?

A That I wouldn't know, sir.

Q You would have no way of knowing at this time, is that correct?

A Not without reading the cases.

MR. DRUKER: Nothing further.

MR. CAHN: Thank you, Sergeant Lang.

THE COURT: All right, you are excused.

(Witness excused.)

MR. NEIL CAHN: Judge Mackston.

THE CLERK: Would you step up here, please.

Raise your right hand, please.

J A C K M A C K S T O N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. N. CAHN:

Q Judge Mackston, what is your present occupation?

A I'm a Judge of the City Court of Long Beach.

Q Would you tell usa little about your background?

A I was admitted to practice before the state courts in 1953. I practiced law approximately twenty years. I ran for office for the post I now hold and I was elected in 1971, I believe.

The November '71 term began in January of '72, and I've been a judge since then.

Q Do you know the defendant William Cahn?

A For many years.

Q Approximately how many years?

A 1953, December.

Q And how do you know him?

A When I first came to Long Beach I met Mr. Cahn. We became law partners. We were partners for about, well, until 1963 or there abouts, when he was elected to the office of District Attorney of Nassau County.

Q Since that time you have continued to know him?

A Yes, I have known him rather well since that time. When he became District Attorney our practice had to cease, our partnership had to cease, and it did, shortly thereafter.

Q Over that twenty-three year period have you had occasion to discuss Mr. Cahn's reputation in the community for truthfulness?

A Oh, yes.

Q Do you know that reputation?

A Very well.

Q What is that reputation?

A Very good.

MR. NEIL CAHN: No further questions.

MR. DRUKER: I'm sorry. No questions.

THE COURT: You are excused, Judge.

THE WITNESS: Thank you sir.

(Witness excused.)

MR. NEIL CAHN: Robin Colin-Green.

THE CLERK: Would you raise your right hand, please.

R O B I N C O L I N - G R E E N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: Will you state your name, please.

THE WITNESS: Robin Colin-Green.

DIRECT EXAMINATION

BY MR. N. CAHN:

Q Mrs. Colin-Green, what is your present occupation?

A I'm an attorney.

Q And when were you admitted?

A January, '76.

Q Prior to that time you were a student?

A Yes.

Q Do you know the defendant William Cahn?

A Yes I do.

Q Approximately how long have you known him?

A Since approximately 1967.

Q And how did you come to know him?

A When I was in high school Mr. Cahn had founded an organization called Deputy Educators Against Narcotics, which was popularly called Dean. It was a nation-wide organization whose purpose was to educate young students as to the dangers of narcotics, and I was the chairperson in 1968.

Q You have known Mr. Cahn since then?

A Yes I have.

Q And over that nine year period of time have you had occasion to discuss Mr. Cahn's reputation in the community for truthfulness ?

A Yes, in fact I have.

Q And do you know that reputation?

A Yes I do.

Q And what is that reputation?

A Excellent.

6

MR. NEIL CAHN: No further questions.

CROSS EXAMINATION

BY MR. DRUKER:

Q When was that organization founded?

A It was founded approximately 1967, to the best of my knowledge. I became a member in 1967; I assume it was founded shortly before my membership.

Q This waslocal or nation-wide?

A Nation-wide. It began in Nassau County and extended nation-wide after that.

Q And where did you live at the time?

A Excuse me?

Q Where did you live at that time?

A Garden City.

MR. DRUKER: Thank you.

MR. NEIL CAHN: No redirect.

THE COURT: You are excused.

(Witness excused.)

MR. NEIL CAHN: May we have a short recess?

THE COURT: All right, the jury will go back to the jury room.

(Recess had.)

THE COURT: How many more witnesses do you expect, Mr. Cahn?

MR. CAHN: I expected three, and two are here and that's one of the reasons I think if I get through I'd like your Honor's indulgence till tomorrow afternoon. I would go for tomorrow afternoon, I think I could get that witness, definitely.

MR. DRUKER: Your Honor, can I just say, enough is enough. The trial has dragged on. I advised --

THE COURT: Is this another character witness or somebody else? I just got word that we have a motion in the Court of Appeals tomorrow on trying to stop the 63rd Street subway station, so that willprobably use up most --

MR. DRUKER: I advised Mr. Cahn, for example, last Wednesday, that in all probability I would finish cross examination Thursday, early afternoon, and I suggested explicitly that he have a witness on tap and ready for tha.. He didn't, so we went over until today, but I just submit that enough is enough and that, you know, the defendant can't be subjected to the same restrictions that the Government can, but he can be subjected to some reasonable restrictions.

THE COURT: Well -- yes, go ahead.

8

MR. CAHN: Your Honor, if you count the number of witnesses we had today --

THE COURT: We have had a lot.

MR. DRUKER: If they are character witnesses I will stipulate.

MR. CAHN: We certainly --

THE COURT: Wait a minute.

MR. CAHN: We certainly could presume that we were going to take the entire afternoon as a result of the experience we have had. There was cross examination --

THE COURT: Yes, Mr. Druker hasn't cross examined them as he had the others.

MR. DRUKER: If they are character witnesses, your Honor, I will stipulate. If Mr. Cahn gives the name and title I will stipulate that each would testify that Mr. Cahn's reputation was excellent for -- for whatever.

THE COURT: All right, we will see. Bring in the jury.

MR. NEIL CAHN: Your Honor, could you hold the jury for a second?

THE COURT: Well, let's go to the side bar. Take your witness, and then we will go to the side bar.

That isn't admissible under what is it, 703.18, except under limited circumstances.

(Jury enters courtroom.)

THE COURT: You may be seated.

Mr. Cahn, your next witness, please.

MR. NEIL CAHN: Mr. Ventre.

THE CLERK: Would you raise your right hand, sir.

A N T H O N Y V E N T R E, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: Will you state your name, please.

THE WITNESS: My name is Anthony Ventre.

DIRECT EXAMINATION

BY MR. NEIL CAHN:

Q Mr. Ventre, what is your occupation?

A Tailor.

Q How long have you been a tailor?

A It's 15 years.

Q Do you have a store?

A Yes.

Q And where is that store located?

A 907 West Beach Street, Long Beach.

Q And do you know Mr. Cahn?

A Yes.

Q About how long do you know him?

A About ten years.

Q How do you know him?

A He's my customer.

Q Over that ten year period have you had occasion to discuss with other people in the community, Mr. Cahn's reputation for truthfulness?

A Yes.

Q Do you know that reputation?

A Excellent.

MR. NEIL CAHN : No further questions.

MR. DRUKER: I have no questions.

THE COURT: All right, you are excused.

(Witness excused.)

THE COURT: Stand over here.

THE CLERK: Raise your right hand, please.

E L L I O T G O L D E N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: What is your name, sir?

THE WITNESS: Elliot Golden.

THE COURT: You were sworn once before. I should have noticed that. Just sit down.

n 11

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. WILLIAM CAHN:

Q Mr. Golden, you are here subject to subpoena today?

A Yes sir, today I am here subject to subpoena.

MR. WILLIAM CAHN: I ask that this be marked for identification.

THE CLERK: Document marked defendant's exhibit R for identification.

(So marked.)

Q I show you defendant's exhibit R for identification, Mr. Golden, and I ask you if you recognize that?

A Yes I do.

Q What is it?

A This is a photocopy of minutes of a meeting of the executive and legislative committees of the New York State District Attorneys' Association held in March of 1967, specifically March 2nd of 1967.

Q And Mr. Golden, was that subpoenaed by the Federal Government, the United States Attorney's office?

A Early last week, yes sir.

Q Would you tell the Court and the jury the circumstances under which that was subpoenaed?

12

A Well, a week ago, last Monday, I believe, I received a telephone call from a gentleman who identified himself as Peter Goldman who said he was with the United States Attorney's office in the Eastern District. He in substance -- I can't give it to you every word, but in substance told me that he was referred to me as a person who could possibly answer a question he had, and that was whether or not the United States District Attorney's Association ever passed any motion or resolution in effect condemning the equating of organized crime with the Mafia or an ethnic group.

And I told him that I would check our records. I had a recollection on the telephone at that time going back some years when you, Mr. Cahn, was president of that association, of your speaking along those lines at some function. And that was my own immediate recollection. But I told him I would check the minutes of the association, I being the secretary of the association even at that time, as well as any other records, to see what more I could find out.

I asked him then why he wanted this information, and he --

MR. DRUKER: Your Honor, I'm going to have to object and ask for a side bar.

12a

THE COURT: All right.

MR. DRUKER: I don't see the relevance.

(continued on next page)

13

T3
R2

fl

(Discussion side bar.)

THE COURT: What is the relevance of this?

MR. CAHN: The United States Attorney has attacked the existence of Sam Houston. One of the things I testified to was the fact that Sam Houston came to me and told me one of the reasons he trusts me is because when I was president I passed a resolution which condemned the use of the word Mafia in dealing with the question of organized crime.

And thereafter the United States Attorney's Office -- and here is the resolution -- subpoenaed -- talked to Mr. Golden and the testimony will show that Mr. Goldman told Mr. Golden that he was requesting this for the use of the Task Force. Five minutes later he came back and he said, "Look, I don't want to mislead you, this is for the trial of Bill Cahn."

At that particular time Mr. Golden said, "Look, these are not my minutes, therefore I want a subpoena." He brought these records to Mr. Goldman, who took them into Mr. Druker. Mr. Druker gave him the subpoena.

Mr. Golden told him, "Look, in all fairness,

I'm going to give this to Mr. Cahn," and Mr. Druker told him, "I'd rather you wouldn't."

And he said, "Why?"

"Because," he said, "He will turn this against me."

MR. DRUKER: I didn't say -- go ahead.

MR. CAHN: Mr. Druker --

MR. DRUKER: Go ahead.

THE COURT: What is the relevancy of this question?

MR. CAHN: Number one, there is such a resolution, it substantiates my testimony, which was attacked by Mr. Druker, number one. And number two, it puts, in my judgment, your Honor, the Government in violation of Brady, in an effort by the Government to keep evidence from me.

THE COURT: You have it, don't you?

MR. DRUKER: He knew about it at the same time we did.

MR. CAHN: I think the jury is entitled to know. If they are entitled to get evidence -- and I don't want your Honor to get angry at me.

THE COURT: No, no.

MR. CAHN: Well, the tone of your voice really --

15

the fact of the matter is I think the jury is entitled to know just exactly the manner in which this was handled by the Government.

MR. DRUKER: That has no relevance at all.

MR. CAHN: It certainly does.

MR. DRUKER: Your Honor, Mr. Golden and Mr. Cahn came in. He said, "I'm going to give this to Mr. Cahn."

I said to him, "You have to do whatever you have to do." I said "Personally, I'd rather you didn't, because he will contrive a story that this was done ahead of time."

My understanding was he gave it to Mr. Cahn. So we both had it last week. Neither of us offered it. And now I object to this, to try to make the prosecution --

MR. CAHN: He was supposed to be here as a character witness, and it was my decision to keep him as a character witness at the time. But I definitely think the jury is entitled now to know that there is such a resolution.

THE COURT: All right.

MR. CAHN: And number two, the manner in which it was --

THE COURT: He came by subpoena, I understand?

MR. CAHN: Pardon?

THE COURT: He's testified he came by subpoena.

MR. CAHN: Yes, but not this. I had this the last time.

MR. DRUKER: Your Honor, the document may be relevant, but not all of the rest of this --

THE COURT: The particular question you asked I don't think is relevant.

MR. CAHN : Your Honor, I don't see how a question of the Government trying to keep -- suggesting that the Government would rather not have Mr. Cahn have this is irrelevant insofar as the trial of the case is concerned.

THE COURT: I'm going to exclude it.

MR. CAHN: You exclude it all together?

THE COURT: I'll exclude the present question.

MR. CAHN: I take exception to your ruling.

THE COURT: All right.

(End of side bar discussion.)

(Following held in open court.)

DIRECT EXAMINATION

BY MR. WILLIAM CAHN CONTINUING:

Q Mr. Golden, is that a true and accurate copy of

17

the minutes as they were in 1967, and kept in the regular course of the business of the New York State District Attorneys' Association?

A Yes they are.

MR. CAHN: Offer it in evidence.

THE COURT: Do you want the whole thing in?

MR CAHN: Well, I don't --

MR. DRUKER: May I see it?

THE COURT: Look at it, Mr. Druker. We didn't see it all at the side bar.

MR. DRUKER: Why don't we do the same as we did with the newspaper articles, and just have the particular relevant paragraph introduced and read to the jury, if that's all right?

MR. CAHN: I have no objections to that.

THE COURT: All right.

MR. CAHN: May I read it, your Honor?

THE COURT: Yes.

MR. CAHN: "Cahn thereafter introduced a resolution, which was adopted at the meeting, recognizing and memorializing the fact that persons participating in and constituting the elements of organized crime are not confined to any religious or ethnic group and should not be so characterized."

MR. CAHN: I ask that this be marked for identification.

THE CLERK: Book marked as defendant's exhibit S for identification.

(So marked.)

Q Mr. Golden, you testified, I believe -- what is your position with the National District Attorneys' Association?

A I am presently a member of the Board of Directors of the National District Attorneys' Association, and also a member of the Executive Committee of that Board, and I have been a member of the Board of Directors for a number of years.

(continued on next page)

IG/rp
pmrl

1 Golden - direct

BY MR. WILLIAM CAHN:

Q And for approximately how long?

A As a member of the Board, I would say for six, seven, eight years; something like that.

Q I show you Defendant's Exhibit S and ask you if you recognize that.

(Handed to witness.)

A Yes, sir.

Q What is it?

A Well, this is a publication that was printed by and distributed by and through the National District Attorneys Association relating to a mock trial of a narctocis case if I remember correctly.

If you will just give me a moment to familiarize myself with this again -- it's been a while since I've looked at this.

THE COURT: Yes.

(Pause.)

A (Continuing) Yes, this is what it is.

This is one of a number of educational terms prepared by the National District Attorneys Association for not only use by the prosecutors through the United States but others involved with law enforcement.

Mr. Cahn had a grade of input and there is a

covering letter by Mr. Cahn as part of the publication.

MR. DRUKER: Objection.

I don't know the relevancy and, number two, the book is not in evidence.

THE COURT: It's a lengthy description, but I will let you finish.

A In any event, it serves as a publication in helping to educate the prosecutors -- in using the word "mock trial" as to how a narcotics prosecution trial might normally proceed.

Q And who was the author of the mock trial, Mr. Golden?

MR. DRUKER: Same objection.

THE COURT: Overruled.

A Basically yourself.

Q Was that trial put on at the various narcotics seminars, some of the seminars sponsored by the National -- withdrawn.

Was that mock trial put on by the National District Attorneys Association at some of the drugs seminars which were sponsored by the NDAA?

A No. My recollection Mr. Cahn is that this was used as the format for some seminars, although I don't remember being present at any specific one, but I remember

it was part of that program in that regard.

MR. WILLIAM CAHN: I offer it in evidence.

MR. DRUKER: Objection.

THE COURT: Come to the side bar.

(The following occurred at side bar.)

THE COURT: You have a lot of material in there about the value -- harmfulness of marijuana.

What's the relevance of that?

MR. WILLIAM CAHN: This is what I was called to lecture on, did so various times before the National District Attorneys Association.

That's the very heart of the case.

MR. DRUKER: I will stipulate, if need be, that Mr. Cahn gave the lectures and did the services required.

I just don't see what that book has to do with any of the issues in this case.

I submit it is wholly immaterial.

THE COURT: Do you really think it is important to the case, Mr. Cahn?

MR. CAHN: I think it is important to me and the case.

THE COURT: I don't care. If they want to read about marijuana, let them.

4 Golden - direct

MR. BOGIN: We have another book, Mr. Druker, and I have discussed it. There are several passages in the book which are relevant and confirmatory as to the defendant's position as to the handling of informants.

We could produce experts to state it is an authoritative work by the Department of Justice and offer it in evidence, but rather than bring the experts in for that purpose, I would ask Mr. Druker for a stipulation.

THE COURT: The purpose of experts is to give their opinions.

MR. BOGIN: Quite so. And the testimony to admit into evidence this treatise would be done through the expert's --

THE COURT: Let's excuse the Jury and talk about this.

MR. NEIL CAHN: During the recess, may we mark some exhibits we didn't have time to mark last time?

THE COURT: Yes.

(The following occurred in open Court.)

THE CLERK: Defendant Exhibit S in Evidence.

(So marked.)

MR. WILLIAM CAHN: May I show this to the Jury?

THE COURT: They can't read it and listen to anything else so let's hand it to them during the next recess.

MR. WILLIAM CAHN: By all means.

THE COURT: Any further questions of Mr. Golden?

MR. WILLIAM CAHN: No, sir.

THE COURT: Mr. Druker?

MR. DRUKER: No questions.

THE COURT: I think there are some exhibits that Mr. Cahn wants to show you, so I will ask you to go into the jury room and look at them while we discuss some other matters.

Give them to Mr. Gerardi.

(Exhibits given to Juror No. 1.)

THE COURT: You may go inside and look at them.

(Jury excused.)

(Continued on next page.)

1A

T4
R2

IG

(The following took place outside the presence of the jury.)

THE COURT: Now, let's hear you on exhibit Q if that's it.

MR. BOGIN: The proposal Ihave to make, your Honor, as an alternative to introducing this document in evidence or obtaining the necessary support for laying the foundation, is that we be permitted to read some of the excerpts from the document itself.

THE COURT: What is your authority for that?

MR. BOGIN: I have no authority at tne moment for reading excerpts but I offer this as a substitute for offering the document into evidence.

The foundation would be that the experts -- and we'd have to delay the trial --

THE COURT: You are not going to do that.

MR. BOGIN: Well, I would like a stipulation from Mr. Druker. Thus, we --

MR. WILLIAM CAHN: It is just a formality --

THE COURT: No, it is not just a formality. Rule 803(18) of the Federal Rules states:

To the extent called to the attention of an expert witness upon examination or relied upon by him direct examination, statements contained in

2A1

published treatises, periodicals or pamphlets may be admitted and read into evidence but not received as exhibits as exceptions tothe hearsay rule.

This wasn't on cross examination of a witness and was not relied on by the witness in his direct testimony so I don't see how you get it in.

MR. BOGIN: I cannot argue your Honor's interpretation of the Rule. I am familiar with it.

Nevertheless, I feel the information in this document is so vital that we really believe we must find a way to make the jury aware of the core of this statement.

THE COURT: Let's see what the statement is you want in.

MR. BOGIN: Very well.

THE COURT: Let me look at it.

(Book handed to Court.)

MR. BOGIN: Page 20. There is material here on the treatment of informants.

What it tends to do, your Honor, is support Mr. Cahn's techniques in the handling of his informants.

THE COURT: Don't whisper to me.

MR. BOGIN: Fine.

3A

I draw your Honor's attention to the fact that the treatise is supplied by the U.S. Department of Justice and recommended by them for the use of prosecutors.

THE COURT: I don't know to what extent Mr. Druker has had an opportunity to analyze it.

MR. DRUKER: I have never seen it.

MR. BOGIN: It's also supported by the L.E.A.A. grant --

MR. DRUKER: Which part?

MR. BOGIN: Well Jim, it's right here and you will find the whole treatment of informants is consistent with Cahn's treatment of his informants.

MR. DRUKER: I think essentially there has been a good deal of testimony the same as this.

THE COURT: Mr. Lang said he didn't rely on it.

MR. BOGIN: He said he couldn't evaluate it. I don't remember his exact statement.

MR. DRUKER: I meant Mr. Crist and others and there was testimony as to the various relationships of informants covered here.

I object, number one, on the grounds that it is improper and number two, is irrelevant.

4A

I don't see anywhere where it says you can commit fraud to pay informants.

THE COURT: That's not the point --

MR. BOGIN: That's unreasonable.

Mr. Lang said he accepted the material in here in the handling of his informants.

THE COURT: I thought he said the opposite -- that he didn't accept it.

MR. DRUKER: He couldn't say.

MR. CAHN: We have debated before and the last time I was right. I am not saying your Honor is wrong now.

However, when I showed Sergeant Lang this particular manual he said yes, he accepted it after identifying it.

What he said was that he did not know whether this was a basic manual accepted by the Department of Justice and Criminal Intelligence Bureaus in general, but he himself accepted it and it was on that basis that at that time I offered to read this particular portion.

I didn't want to introduce the manual into evidence but at that particular moment I offered to read the pertinent part of the manual which I thought

5A1

was relevant to the case.

MR. DRUKER: I think the rule is clear. It is explicit, not implicit. It prohibits the introduction of this document under these circumstances.

THE COURT: I think the most that can be done is to read some of it into evidence.

What portion do you wish to read?

MR. CAHN: In the final analysis, regardless of the kind and amount of reward, the maintenance of a good informer depends basically on his belief that his contact is being honest with him in all matters.

The payment of money to informers raises serious problems for the department.

A fund for this purpose must be approved by the financial unit of the agency. Then there must be an agreement reached on safeguards so that the use made of the funds can be checked. Safeguards could involve receipts or the presence of a witness when the paying officer passes the money to the informer. Sometimes, however, an informer may be so suspicious that he will work with only one person he knows in the agency and give no receipts.

The decision on the accompanying risks versus the value of information will have to be made on a

6A

case-by-case basis.

Information on crime leaders can be expensive and usually becomes moreso the higher the level of target.

It appears that despite the problems, the effort to get a substantial fund for informers is worthwhile.

That is what I wanted to read.

MR. DRUKER: MAy I take a look at that, please?

MR. CAHN: Certainly.

MR. BOGIN: That's enough. It's all there. If he lets in that much, I am satifisfied.

I believe this is of sufficient probative value for the jury to have the benefit --

MR. DRUKER: Your Honor, this is written by two PHD's and published by L.E.A.A. but not published by the Department of Justice.

I'm going to object. I know it is not one of the manuals issued by the Department of Justice --

MR. BOGIN: We didn't manufacture it.

MR. DRUKER: I'm sure it's legitimate but I don't think this is a document used by law enforcement officials too widely and I won't recognize this as being written by any experts in the field or containing

7A

any expertise.

Two PHD's wrote this, your Honor.

MR. CAHN: May I suggest tnat we check Sergeant Lang's testimony to see whether he --

THE COURT: It starts out with tne statement that: The fact that the law enforcement assistance administration furnished financial support for the writing and publishing of this manual doesn't necessarily indicate the concurrence of L.E.A.A. in the material presented herein.

MR. CAHN: They are not a law enforcement agency. They are a funding agency. That means nothing. The Department of Justice is the one that got the grant and saw fit to put out the manual and distribute it at the seminars.

They are a funding agency, not a law enforcement agency.

THE COURT: Of course, it seems to me it is talking more about establishing a fund like your investigation fund more so than it is talking about establishing a fund like the so-called Sam Houston fund.

MR. CAHN: Your Honor, it recognizes the difficulty of paying informants. It recognizes the

absolute importance of insuring to the informant that the word of the person to whom he is giving information is also sacred and that is the exact -- exactly -- the point was asked me, why couldn't I have given -- or gone through -- or it was suggested in this case, why couldn't I have used the regular method of paying the informant and the answer was that I gave my word and on the basis of that, I say to your Honor that it indicates in every substantial way that giving my word to an informant was important.

MR. DRUKER: Number one, Mr. Cahn elicited testimony to that effect from himself, Sergeant Lang and possibly others.

Number two, it is not a recognized book in the field, to my knowledge.

Sergeant Lang isn't an authority in the field and no one recognized this book to be authoritative in the field in this case and there is absolutely no basis for the introduction in toto or in part as to this book under the Federal Rules.

(continued on next page)

T 4 1
IG R 3

MR. WILLIAM CAHN: Mr. Druker is totally unfair to Sergeant Lang who was in charge of the Rackets Bureau for eight years, as far as I know and the fact that he accepted it is the basis of the rule and gives substance to the introduction of that statement.

MR. DRUKER: Accept it as what? He accepted it as a book, as whatever it purported to be about. He didn't testify as an expert in his own right --

THE COURT: No. He is an expert and he recognized this as having some sort of authority.

I just do not think he relied on it. I think the statement about paying the informants is misleading.

MR. WILLIAM CAHN: Your Honor can add or delete whatever he sees fit.

THE COURT: I think Mr. Druker that Mr. Cahn could probably find some expert who would testify on the basis of this and thus make available a good part of what he has described. Then he'd be subject to further cross examination by you on anything else in the book.

I don't know whether you want to call Sergeant Lang back to inquire further. I excused him.

10A1

I am inclined, for the sake of expedition, to admit the part from pages 20 to 21 that I have marked leaving out those last two sentences.

Let Mr. Bogin see it.

MR. BOGIN: Omitting the parts in pencil --

THE COURT: Taking in just the parts in pencil and reading to the jury the caveat on the front of it too.

MR. BOGIN: We would accept that if Mr. Druker will stipulate to that.

MR. DRUKER: I have no objection.

The only question remains as to what we are going to tell the jury as far as the book.

I don't want them to be mislead into thinking this is a departmental manual.

THE COURT: I think the cover page should be read.

MR. CAHN: Happy to do it.

THE COURT: Then this part from pages 20 and 21.

MR. BOGIN: That's acceptable and thank you.

MR.NEIL CAHN: There is one more exhibit. It is an update and correction of exhibit P, the bigger chart and we have reduced it down to a single

11A

page document and I ask that it be marked as exhibit P-1.

I have the adding machine tapes too.

THE COURT: Have you had time to look at it, Mr. Druker?

MR. DRUKER: I have not been shown it yet.

(Document handed to Government counsel.)

THE COURT: 1 and 2 were returned to the County. I'm not sure what is meantby "returned directly."

Number 3, I don't recall if that was returned to the County.

MR. WILLIAM CAHN: This is the evidence -- that's what we are claiming -- that we have a receipt for 1 and 2.

For 3, the receipt -- for 3, the testimony is we had no receipt but if you remember Mrs. Masden said she gave it to Hy Goldstein and I gave testimony to that effect as well.

MR. NEIL CAHN: "Returned directly" means returned directly to the County Treasury.

THE COURT: Do you have any other witnesses this afternoon?

MR. WILLIAM CAHN: In view of your Honor's ruling I think we will rest -- in reference to this,

12A

I think we will rest.

THE COURT: Your other witness would have been an expert?

MR. WILLIAM CAHN: Yes, very definitely.

Your Honor, with reference to defendant's exhibit I for identification four people have testified about this photograph as representing Sam Houston and one individual based his whole testimony on this bearing a relationship to Sam Houston and I think it is a vital piece of evidence.

THE COURT: Let me look at it again.

(Document handed to Court.)

THE COURT: What does it say on the back?

MR. NEIL CAHN: That is a generic description.

MR. DRUKER: I have no objection to the photograph being admitted without the notation on the back.

MR. WILLIAM CAHN: No problem.

THE COURT: I think it is proper.

MR. NEIL CAHN: We can remove it.

THE CLERK: Defendant's exhibit I marked in evidence.

(So marked.)

MR. NEIL CAHN: We'd like to pass it to the

13A

jurors.

THE COURT: Yes.

Mr. Druker, have you looked at that document?

MR. DRUKER: Again, the Government will have different contentions but if the defense wants to use this in support of its contentions there is no problem as long as the Government is allowed the same latitude.

Is it in evidence or for identifcation as an aid?

I think it would be best for both sides to have them as aids.

THE COURT: They are like transcripts of tapes that the jury can look at.

MR. DRUKER: Although they are not in evidence in and of themselves.

THE COURT: Yes.

Let them be marked with that understanding.

THE CLERK: Defendant exhibit P-1.

(So marked.)

MR. WILLIAM CAHN: One more item as long as the jury is still out.

There has been, through cross examination, an attack on the existence of Sam Houston and the

validity of the information. I therefore ask the Government to produce the tape recordings of a conversation between a government agent and myself, made, I believe, on October 4, in which the Government agent stated that he was Sam Houston and had a conversation with me at that time.

MR. DRUKER: There is no such tape.

If Mr. Cahn is referring to a tape of an individual not at all affiliated -- a truck driver from Costa Mesa California, we have such a tape and Mr. Cahn has a transcript.

I will provide the tape for his listening. He can duplicate the tape. But this individual was in no way connected with the Government other than having been arrested by local authorities from time to time in the last twenty-five years.

MR. WILLIAM CAHN: Your Honor, the transcript of the tape indicates instruction given to whoever made the call by Mr. Druker.

MR. DRUKER: It was a truck driver who made a call pursuant, if you will, to our request or his offer.

We are just talking semantics. He is not an employee of the Government --

15A

THE COURT: Do you have the transcript?

MR. WILLIAM CAHN: Yes.

THE COURT: Do you want to offer it?

MR. WILLIAM CAHN: Yes.

THE COURT: Let me see it.

Mr. Houston was a witness at the last trial?

MR. DRUKER: Yes.

He testified under oath at the last trial that he never met Mr. Cahn and never saw him and Mr. Cahn, I believe, stated he was in agreement with that.

MR. WILLIAM CAHN: The purpose -- I believe that is exculpatory, that conversation and it is the Government's attack -- and may I bring to your Honor's attention this was made known to me after my arraignment and after I had an attorney -- made known directly to me --

THE COURT: This isn't the truck driver named Sam Houston, is it?

MR. DRUKER: Yes, it is.

This is one of the counts in a separate civil suit but I don't see what that has to do with this.

THE COURT: Do you claim this is the Sam Houston --

MR. WILLIAM CAHN: No. I claim that since the

16A1

Government has now attacked the existence of Sam Houston, has attacked the value of the information and his very being that that conversation, instigated at Mr. Druker's request -- I don't care who physically made the telephone call -- but it was made -- and I say to you, that it indicates, through my answers, that there was a Sam Houston.

THE COURT: You can resume the witness stand and testify to the conversation if you want.

MR. WILLIAM CAHN: The Government will not oncede that conversation took place.

MR. DRUKER: Of course it did. Of course it took place. We say it is neither relevant nor material.

The fact that the Government tried to track down a Sam Houston doesn't contradict our belief that there is no Sam Houston.

This was an individual who we thought might be a gambling collector or blackmailer named Sam Houston and we went to see him thinking he was a key to the case and it turned out he was nothing related to the case and it doesn't prove anything -- the fact that we made an attempt to see if there was or wasn't a Sam Houston.

17A

MR. WILLIAM CAHN: But the fact that the man identified himself as Sam Houston and I asked, what is the code word -- that's the important --

THE COURT: How are you going to offer this?

MR. WILLIAM CAHN: I thought if the Government conceded that conversation took place we would stipulate as we have done with other pieces of evidence.

(continued on next page)

18A

THE COURT: Do you want to stipulate it?

FL T5 R1

MR. DRUKER: No, your Honor, I don't.

THE COURT: Well, it depends on whether Mr. Cahn wants to take the stand again and testify to the conversation, I suppose.

MR. CAHN: For that purpose alone.

THE COURT: I don't know.

MR. DRUKER: I might -- there are some things that I discovered after Mr. Cahn -- I'll represent it now that I discovered after Mr. Cahn left the stand that I would like -- that bear on credibility and the like, and I would like to go into on cross examination.

THE COURT: Yes, I don't think I would limit the cross examination --

MR. DRUKER: Excuse me --

THE COURT: (continuing) -- if there is further testimony. I'm not going to keep the jury too long this afternoon. Let's bring them in and read these couple of things, and then we will see whether you are going to rest or not.

MR. CAHN: May I have that?

THE COURT: Yes. Give it back.

(Jury entered the courtroom.)

THE COURT: All right, you may be seated.

I'm going to keep you for just a few more minutes. There are two or three things that we have discussed.

First, without receiving the entire L.E.A.A. Manual in evidence, I have ruled that Mr. Cahn may read a couple of paragraphs from the middle of it if he reads the front, which describes how it was prepared and what the limitations are on its authority.

MR. CAHN: Thank you, your Honor.

"Basic elements of intelligence, a manual of theory, structure and procedures for use by law enforcement agencies against organized crime. By E. Drexell Godfrey Jr., Doctor of Philosophy, and Don R. Harris, Doctor of Philosophy.

"The fact that the law enforcement assistance administration furnished financial support for the writing and publishing of this manual does not necessarily indicate the concurrence of L.E.A.A. in the material presented herein. Technical assistance division, Office of Criminal Justice Assistance, Law Enforcement Assistance, Department of Justice, November, 1971, for sale by the superintendent of documents, United States Government Printing Office, Washington D.C., 20402.

20A

Price $1.25, stock number 2700-00162."

"In the final analysis, regardless of the kind and amount of reward, the maintenance of a good informer depends basically on his belief that his contact is being honest with him in all matters. The payment of money to informers raises serious problems for the department. A fund for this purpose must be approved by the financial unit of the agency. Then there must be an agreement reached on safeguards so that the use made of funds can be checked. Safeguards can involve receipts or the presence of a witness when the paying officer passes the money to the informer. Sometimes however an informer may be so suspicious that he will work with only one person he knows in the agency and will give no receipts. The decision on the accompanying risks versus the value of information will have to be made on a case-by-case basis."

MR. DRUKER: May I see that?

MR. CAHN: Is that all, your Honor?

THE COURT: Yes, I think that was the end of it.

And I think there was an exhibit that we were going to receive.

21A

MR. CAHN: I show defendant's exhibit I to the jury.

THE COURT: Is there anything else from the defendant?

MR. CAHN: Your Honor, the defense rests.

THE COURT: Then we will resume on Wednesday morning, as I had told you before. The Government may have some rebuttal. We will try to start at ten o'clock.

And in the meantime you have another day free. Don't talk about the case among yourselves, don't read or listen to or watch anything about it. Don't talk to your friends or family about it, and avoid talking with any of the people who are in the courtroom if you see them.

You are excused until Wednesday morning. Thank you.

I anticipate that we may finish the case on Wednesday and then have the instructions on Thursday, and leave it for your deliberation. I'll tell you more on Wednesday night, but you should plan your week to be free on Wednesday evening long enough to decide it if possible.

Thank you. Ten o'clock Wednesday morning.

22A

(Jury exists the courtroom.)

THE COURT: Would it be good to spend an hour tomorrow afternoon reviewing the requests to charge? Have you been over them, Mr. Druker?

MR. DRUKER: Not yet, your Honor. I'll go over them tonight. I have been over them generally, but I haven't had a chance to go into the specifics.

THE COURT: Will you be most of the day on Wednesday?

MR. DRUKER: Yes.

THE COURT: I think it might be well to spend some time tomorrow afternoon on that, say start at three o'clock. I should be back by then. And that will help people, guide people in the preparation of their summations too.

MR. CAHN: Tomorrow afternoon at three o'clock?

THE COURT: Tomorrow afternoon at three, without the jury.

MR. NEIL CAHN: Your Honor, on Thursday we may request of the Government to have copies made of the exhibits which we do not have. We haven't received any copies --

MR. DRUKER: I'm having that done. Both Xerox machines were broken Friday, but in any event

23A

we have been working with them. I now have them assembled, and I'm going to have them Xeroxed tomorrow.

THE COURT: All right, have them tomorrow at three, then. Very good.

(Whereupon court was adjourned at 4:40 p.m. for the day.)

I N D E X

961

Witness:	Direct	Cross
JAMES A. O'CONNOR	867	
LILLIAN KORNACKI	869	
SALVATORE RIZZI	870	
DONALD SULLIVAN	872	
JESSIE J. EVANS	873	
NICHOLAS GARAUFIS	875	
RICHARD BERNSTEIN	878	
EDWARD L. MELTON	880	
BURTON B. ROBERS	882	
JOHN LINING	884	886
LEE MIDDLETON	886	
BERNARD KLIGFELD	891	
JOHN LANG	893	

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

E X H I B I T S

Government's Exhibit		For Id.	In Ev.
79	Document	910	
Defendant's Exhibit			
S	Treatise		937
I	Composite	889	
Q	Manual	900	

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

WILLIAM CAHN, : 75-CR-645

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 9 1976
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

May 19, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

HRNRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

129

Appearances:

DAVID G. TRACER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES O. DRUCKER, ESQ.
Assistant U.S. Attorney

WILLIAM CAHN, ESQ.
NEAL CAHN, ESQ.
Attorneys for Defendant

THE CLERK: The United States of America versus William Cahn.

THE COURT: I'm sorry my time was so short yesterday afternoon but I'll try to make up for it later on.

MR. NEAL CAHN: There was some unfinished business yesterday.

MR. DRUCKER: The Government's first witness has an emergency situation, could we adjourn the argument for a few moments.

MR. NEAL CAHN: It was really nothing but an inquiry, a further request to charge.

THE COURT: I'll hear you at some greater length on that.

MR. NEAL CAHN: I had inmind that we should really submit our additional request in writing and I'm intending to suggest that we do that tomorrow morning. There were one or two things that I would like to draw to your Honor's attention orally and that was in connection with your Honor's suggestion that the funds received by Cahn from the County were in fact reimbursements. The evidence is quite to the contrary and there isn't any contradiction in the evidence concerning the quality and the nature of the payment by Cahn to the County. We have furnished them

advances. The witness has called them advances. Mr. Cahn in each one of the counts has testified that the sums received from the County were in fact advances, and the theory of the defendant's case, of course, is that these advances were repaid by the utilization of the funds received from the private entities.

THE COURT: The Government isn't bound by that theory.

MR. NEAL CAHN: I know. I wanted to suggest the question of the quality or the label to be applied to these sums paid by the County is one for the jury, that the jury has to find from the evidence what it believes those payments were in fact. It is our contention that they were advances and we think it's the foundation of the jury to make that determination and all we were asking for at the time of the determination of our discussion yesterday was that that charge be made in at least in terms of your Honor's language, that the jury has the obligation of determining what in fact these payments were; whether they were advances or reimbursements.

The second thing I wanted to mention to your Honor was simply that we had in mind to submit the proposal that your Honor instruct the jury as to the

theory of the defendant's defense. Your Honor is well aware --

THE COURT: Yes --

MR. NEAL CAHN: We would propose to submit these to request which -- also two others which Mr. Cahn worked on and we'll give you that tomorrow morning.

MR. DRUCKER: The only thing that I would ask just briefly, what I mentioned at the end of the day, if the Court is going to give an instruction with regard to the applicability or inapplicability of the Sam Houston defense with regard to Count 1, 2, 3 and 4 through 10, and the particular language is at the last paragraph of page 3 of the Government's request to charge --

MR. NEAL CAHN: I haven't seen that. I'm unable to comment on that. Of course, I would take exception to that proposal.

MR. DRUCKER: On what basis?

MR. NEAL CAHN: Simply it being contrary to my understanding of the function of the jury. I think the jury would have the right to make the determination as to whether the payments to Sam Houston constitute an extension of a false activity.

THE COURT: The charge is, you may find him

guilty even if he used the funds. I'll have to cover that also with something in language what Mr. Bogan said.

MR. DRUCKER: We contend this is a matter of law rather than fact; this defense does not go to the charge of making a false statement. It was either true or false, it doesn't matter whether --

MR. NEAL CAHN: Again, we come back to the primary theory of the defendant's case, which is that the advances by the County were exactly that, advances; and if the jury finds that to be so, then subsequent activity of the defendant in respect to the treatment of the money --

THE COURT: I'll pass on that later on. We have the jury here now, so we'll resume.

(Whereupon, jurors enter the courtroom and are now seated in the jury box.)

THE COURT: Good-morning, ladies and gentlemen. We are now on what we call the Government's rebuttal.

MR. DRUCKER: The Government calls Mr. Arnold Tolkin.

A R N O L D T O L K I N, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Mr. Tolkin, will you tell the jury the place and nature of your present employment?

A President of ATS Travel, located in Roslyn Heights.

Q Do you know Mr. Ira Theodore?

A Yes, he's my partner.

Q For how long do you know Mr. Theodore?

A Since 1970.

Q Now, do you know the defendant William Cahn?

A Yes, I do.

Q For how long have you known Mr. Cahn?

A Since about the end of 1969.

Q And would you characterize the nature of your relationship with Mr. Cann, was it business or social or both?

A It was mostly business, some social.

Q And was he a customer of yours over the years 1970 to 1974 or thereabouts?

A Yes, he was.

Q Did he arrange for personal trips with you?

A Yes, he did.

Q Did he arrange for business trips with you?

A Trips for the county and other trips; yes, sir.

Q Are you familiar with the National District Attorneys Association?

A Yes.

Q Do you know whether or not the defendant had any affiliations with that organization in the years 1970, '74?

A He was president of that organization for a period -- within that time period.

Q And on occasion, did the defendant arrange for group trips for the National District Attorneys Association through your agency?

A Yes.

Q Mr. Tolkin, November 29th to December 13th, 1971, or thereabouts, do you recall that trip?

A That was a trip to London and Europe.

Q Did Mr. Cahn go on that trip, to your knowledge?

A Yes.

Q And other individuals?

A Yes.

Q Roughly, how many, if you recall?

A Approximately 80.

Q Who arranged for that trip? Who was the rounder-upper, so to speak?

A It was arranged through the National District Attorneys Association.

Q Now, to your knowledge, was Mr. Cahn to receive

any complimentary arrangements or was he to pay the full expenses that everyone else was paying?

A There was a complimentary arrangement in that trip.

Q What was the amount of that, if you know?

A The amount of the complimentary arrangement?

Q Insofar as Mr. Cahn was concerned.

A I think the trip -- continuation through Europe was complimentary and a portion of the London trip was complimentary.

Q I show you Government's Exhibit 62 in evidence and I'll ask you if you recognize that as being one of the business records of ATS relating to that trip?

A Yes, it is.

Q On there it reflects that Mr. Cahn paid a deposit of $50.

A Yes.

Q And then a further payment of $345?

A Yes.

Q What did that $395 represent?

A That was half the cost of 2 people on the trip to London.

Q And did he go with someone else?

A Yes, with Mrs. Cahn.

Q And the $395, did that represent his London trip or hers, if you know?

A I don't recall; it's for half.

Q Was there to be any further payment other than that $395?

A Not that I recall.

Q And was there ever any further payment by Mr. Cahn or anybody else in his behalf of the $395?

A No.

Q Are you absolutely certain of that, Mr. Tolkin?

A Yes, sir.

Q Now, when Mr. CAhn returned from this trip, which would be December 13, 1971, after that, did he have occasion to request anything from you?

A We were requested to send an approximate cost invoice for a single individual traveling on that trip.

Q Who made this request of you to the best of your recollection?

A I don't recall exactly right now. It came from the County office.

Q And pursuant to this request, did you send out some sort of a document?

A Yes, we did.

Q I'm showing you now the 3rd page of Government's

Exhibit 63 in evidence, I'll ask if that's a copy of the document that you sent to Mr. Cahn?

A Yes, it is.

Q Now, there is an invoice for $1,050?

A Yes.

Q Was that invoice one that was given to everyone on the trip?

A No, it wasn't.

Q Was it made up pursuant to this request that you must mentioned?

A It was.

Q And other than Mr. Cahn, was it given to anybody else, such an invoice?

A No, but it covered cost of suites and additional accommodations.

Q This would be a hypothetical --

MR. NEAL CAHN: Objection to the characterization.

Q Was this an actual cost, $1,050; was that an actual cost to Mr. Cahn?

A No, it was not.

Q What was that $1,050, what did it represent?

A It was an estimated cost of transportation, single accommodation and suites where these hotels are listed.

Q Now, going back to approximately December 13, 1974, did Mr. Cahn -- first of all, did Mr. Cahn telephone you or did you telephone him for an appointment?

A In December of 1974?

Q Yes, sir.

A Mr. CAhn called me.

Q In that phone call, what, if anything, was said?

A Nothing. He just called for an appointment.

Q Was an appointment made?

A An appointment was made.

Q Subsequently, did he come to your office?

A Yes, he did.

Q When was that, as best you can recollect?

A On Friday late afternoon.

Q Was he alone or accompanied by anyone?

A He was alone.

Q Were you alone or accompanied by anyone?

A Mr. Theodore was in the office with me.

Q Ira Theodore?

A Yes.

Q When Mr. Cahn came into the office, did you have any discussion with him?

A Yes, we did.

Q Will you relate that conversation as best you can recollect, telling what Mr. Cahn said and what you said, and what Mr. Theodore said.

A He was concerned about the London trip, a lot came out in the papers. I wasn't exactly aware of what the major concern was, concerning the payment, and he intimated that there was a problem with the London trip and that in going through his records he couldn't find a record of having paid us, which was, of course, unusual since there was no demand for payment made on that particular trip.

Q And what else did he say?

A Then he said -- "Well, I thought I paid you for the trip. In case I didn't, here's a check."

Q Moving back a little bit, do you recall him saying else prior to that?

A He asked us if we could help him out on that particular trip.

Q And what did you say to him?

A I said I couldn't; that we would be saying something that wasn't true. I could not commit perjury.

Q And what did he say to that?

A Nothing. He felt that he had paid us for the trip. He said I'm going toleave you this check.

Q First there were two aspects to that conversation, was there not?

A Yes, there was.

Q The first part of the conversation, will you tell us as best you can recall, just what Mr. Cahn said.

A As best I can recall, he was concerned about the London trip, and as I said, I wasn't too sure why there was major concern except perhaps for the fact it was a comp trip, and maybe as District Attorney he shouldn't have had a comp trip, but other than that that was my discussion with him at that point.

Q Have you exhausted your conversation with regard to the first half of that conversation?

A Well, he felt the trip should have been paid for.

Q What did he say?

A He said he thought the trip should have been paid for and he asked us if we could change our records to show that the trip had been paid.

Q You refused to do that?

A I could not do that. I could not go back to the records and change them.

Q What did he say?

A He said I went through my drawers, I thought I had paid you, then left the check.

Q What did you do with the check that he left?

A I put it in a drawer.

Q Showing you Defendant's Exhibit D in evidence, I'll ask you if you recognize that as being the check that Mr. CAhn gave you?

A Yes, it is.

Q By the way, there is a stamp on the back, is there not?

A Yes.

Q How was that placed there, if you know?

A I placed it there.

Q And why?

A Because I didn't want an unmarked, unstamped check floating around the office. Immediately after this occurred, I spoke to my attorney because the whole thing was just becoming too involved, and I decided then to keep the check and I didn't want a check floating around without a stamp on the back.

Q Would it refresh your recollection if I asked you whether or not Mr. CAhn said anything about backing him on a story regarding the London trip in the early part of the conversation?

A He asked us if we could show payment on our records, which I could not do.

Q Now, by the way, was it usual or unusual for

Mr. Cahn to receive complimentary arrangements on group trips back in '71 to '74?

A It all depended upon thetrip.

Q Do you recall a group trip to Yugoslavia that Mr. Cahn had part in arranging?

A Yes.

Q Was that in the summer of '72 or '73?

A That must have been the summer of '73.

MR. NEAL CAHN: What's the relevance of a trip to Yugoslavia? This is the first time this came up. I don't see anything in regard to rebuttal.

THE COURT: This is proper.

Let me just tell the jury, this goes to the question of credibility and intent and motive, but Mr. Cahn is not charged in the indictment with anything relating to the Yugoslavia trip, so you're not to convict him on account of the Yugoslavia trip.

MR. DRUCKER: May this be marked for identification?

THE CLERK: One-page document marked Government's Exhibit 80 for identification.

Q I'm showing you this, I'll ask you if this refreshes your recollection as to when the trip to Yugoslavia was?

A In the summer of 1974.

Q Did Mr. Cahn have any part in arranging that trip or putting the group together?

A Yes, he did.

Q Now, who was the group, by the way?

A A group from the Nassau County District Attorney's office.

Q Assistant District Attorneys; and was there judges on that trip too?

A I don't recall who was on the trip -- mostly people from the County District Attorney's office.

Q Will you tell the jury whether or not Mr. Cahn's trip was in part or whole complimentary?

A It was partial complimentary.

Q Do you recall a trip in or about the summer of 1973 to Spain?

A Yes.

MR. NEAL CAHN: Similar objection.

THE COURT: Same ruling.

Q Did Mr. CAhn have any part in putting that group together?

A Yes, he did.

Q Was that also a District Attorney's office group?

A Yes.

Q Whether or not Mr. Cahn's trip was in part or in whole complimentary on that occasion, do you know?

A That was complimentary.

Q Do you recall a convention back in August of 1972 of the National District Attorneys Association in San Juan, Puerto Rico?

A Yes.

Q Did you have any part in making the pre-convention or convention arrangements for that trip?

A No.

Q Did you make any hotel arrangements for the convention?

A We handled the hotel arrangements through Loews Hotel who owned the hotel at that time.

Q What hotel was that?

A The Americana.

Q Do you know whether or not Mr. Cahn was to receive complimentary rooms, No. 1, at the convention; and No. 2, to inspect visits prior to the convention?

A There was a contract that had been drawn before we entered into the handling of the trip, the accommodations on the trip for participants that indicated complimentary arrangements were to be provided.

Q Was Mr. Cahn aware of this, to your knowledge?

A I believe he had a copy of the contract.

MR. DRUCKER: Thank you, Mr. Tolkin.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Tolkin, I show you Government's Exhibit 62 and ask you what amount of the deposit shows?

A For who?

Q For the defendant William Cahn.

A $50 deposit.

Q And thereafter?

A Final payment of $345.

Q What did you say that 395 represented?

A 395 was the cost of half a double on the trip to London.

Q Well, if you double 395, that's 790, isn't it?

A Yes.

Q What is the 895?

A The cost of the second week in Europe was $1,240 for two, which is $620 per person, and if you take 1240 and deduct the 395 you come to 895.

Q And there was no question that Mrs. Cahn and the defendant were going on a trip for two weeks; is that correct?

A That is correct.

Q By the way, this was a group from the National District Attorneys Association?

A This was arranged by the National District Attorneys Association.

Q Now, at the time you received the deposit, the 50 and the 345, did you intend, or was it understood between you and the defendant William Cahn that the trip was to be complimentary?

A This particular trip to London, the original negotiations involved myself as well as another individual, Mr. Jim Sohin (phonetic) whowas in the employ of ATS Travel Group, consultant at the time, and all of the pre-requisites concerning the trip were not provided to me, and after the trip had been arranged and calculated, Jim had told me of the various factors concerning the trip and the complimentaries that were to be provided thereafter; no additional monies wee forthcoming.

Q Now, you were asked whether additional monies were to be forthcoming by Mr. Drucker. You answered, "Not that I recall."

A No money was asked for because the negotiations Mr. Sohin had been prearranged for one-half complimentaries.

Q Isn't it a fact, Mr. Tolkin, that Mr. Sohin had left your organization long before that?

A No.

Q And isn't it a fact that the details of all of the matters involving the trip to London -- by the way -- I withdraw the question.

Did you go to London?

A I was there for a couple of days.

Q And you helped arrange the programs?

A Seminars in London and in Amsterdam, Brussels and Paris.

Q You helped arrange those?

A Yes.

Q You were instrumental in having the entire group, the entire group guests of Parliament and having dinner there?

A Through our office in London we made use of it, use of Parliament.

Q And that had to be at the invitation of a member of Parliament?

A Pier Morrell.

Q You arranged that, not Mr. Sohin?

A I had the experience in doing these things; Mr. Sohin was with us for a period of from October until

February at which time he decided the travel business was not for him and left.

Q So what you are saying then is that Mr. Sohin made the arrangements with me; on what you are testifying to insofar as these arrangements are concerned is hearsay?

A No, sir. Mr. Sohin made the initial arrangements and Jim and I had agreed that we would honor the arrangements because this is what was committed to in the hopes of future business with the National District Attorneys Association.

Q You already had the business of taking care of the programming in San Juan, Puerto Rico, did you not?

A Yes, sir.

Q And you also had the business of the District Attorney's office, did you not?

A Yes, sir.

Q So the future buainess you referred to, Mr. Tolkin, was really at that time, a reality?

A Right.

Q Now, you say that after the trip you were asked to submit a bill?

A We asked to send an invoice which would state what it would cost for a single accommodation, using suites

at these hotels and transportation and transfers and duties.

Q What was the bill that you sent, the invoice that you sent?

A Just an invoice, an estimate of what these costs would be.

Q And who requested the invoice?

A I'm almost sure it was yourself. At the time nobody else in the office would have requested it.

Q When you were questioned by Mr. Drucker, you said you didn't know.

A I'm not too sure whether it came from someone in the office or not; it might have.

Q Then you don't know?

A I'm not too sure; no.

Q But in any event, this is the invoice you sent?

A Right.

Q $1,050?

A Yes,sir.

Q And tell me the 895 on Government's Exhibit 62, how is that represented on your books?

A It was represented as a loss of profit.

Q An unpaid bill; isn't that it?

A No, as a loss of profit.

Q A loss of profit?

A Because at this point there was no bill in question.

Q Taking that into consideration, Mr. Tolkin, what is represented by the figure 895?

A Difference between 1240 and the money that we had received.

Q And how is it represented? I submit to you, is it not an uncollected amount on your books?

A Based on the cost, the total of the trip; yes.

Q No matter what it is based on, it is represented on your books as an uncollected debt; isn't that right, sir?

A Not really.

Q No? Well, before I used the words uncollected amount and you said that's right; now I used the words uncollected debt, you say not really. What is it?

A Estimated loss of profit on the total cost of the trip.

Q Estimated loss of profit?

A Yes.

Q How do you estimate a loss of profit?

A Because on each of these trips we calculate so much profit into the cost of the trip, and at this point

based on the monies received and the total cost for two people on the trip, this was going to be taken from the total profits earned on the trip as a loss of profit.

Q Did you take a tax deduction for that?

A For what?

Q For the 895?

A No.

Q In your estimated loss of profit, then I fairly state, Mr. Tolkin, that that would have been the amount owed to you had the trip not been complimentary?

A Yes.

Q Now, did there come a time in November of 1974, Mr. Tolkin, that you arranged for Mrs. Cahn and the defendant William Cahn and another couple to go on a two-week vacation?

A Yes, sir.

Q And can you remember when that was?

A It was immediately after the election, I believe it was a cruise out of Florida.

Q A cruise out of Florida?

A Yes.

Q And if I suggested to you that the dates were from the 16th of November to the 30th of November of 1974, would that refresh your recollection?

A Yes, that's approximately right.

Q Now, Mr. Tolkin, isn't it afact, sir, that following the vacation you called me and asked me how I enjoyed it?

A Yes, I did.

Q And wasn't it at that time that you said to me, "My records -- all of my records pertaining to your travel have been subpoenaed by the Government and going to be questioned by the Government."

A Yes, sir.

Q You called me.

A I called you to collect on thetrip and I advised you that we had been subpenaed.

Q And at that time didn't you say to me I'm concerned about the London trip? You are hesitating.

A Not that I recall.

Q You don't recall. You can't be sure.

A Right.

Q I take it then if you can't be sure, you could have said that to me.

MR. DRUCKER: Objection.

THE COURT: Well, he said he doesn't recall.

A I don't recall. I don't know the nature of what the Government had asked us at that point.

Q Well, at that time, didn't I say to you what about the London trip and you said the outstanding balance?

A No, sir.

Q You didn't say that?

A No, sir.

Q And wasn't --

By the way, when did the telephone call take place?

A Just after you came back from the cruise.

Q Weren't you away for awhile after I came back from the cruise?

A I was away for a couple of days.

Q You were in Mexico?

A I was in Mexico.

Q If I recall, you came rather ill, did you not?

A Yes, sir.

Q And when you called and whatever you remember about the discussion in reference to the London trip, did I say that I would like to see you about it?

A I believe you did.

Q And I came to your office, did I not?

A Yes, sir.

Q Do you remember the date?

A I don't recall exactly but it was a Friday. I believe it was December 13.

Q It was Friday, the 13th, wasn't it?

A Yes.

Q The date of that check?

A Is December 13.

Q And if Mr. Theodore suggested that that particular check was predated, he's incorrect?

A It was written in the office.

Q If Mr. Theodore suggested that that check was predated, he's incorrect?

A He's incorrect.

Q Thank you.

Now, Mr. Tolkin, I came into your office, it was around 6 o'clock in the evening, was it not?

A Approximately that time.

Q Wasn't it afact that you found it difficult to come to my office that night?

A Yes.

Q And isn't it a fact, Mr. Tolkin, that Mr. Theodore was involved with two clients in a different room?

A Not initially. He was in the office with us, then he had to step out for a couple of moments.

Q For how long?

A For a couple of moments.

Q Two minutes?

A Five minutes.

Q Five minutes?

A Right.

Q And he was there from the beginning of the conversation and then stepped out for five minutes and then he came back?

A Yes.

Q You testified that I said to you, "I thought I paid that trip."

A Yes, sir.

Q I said that?

A Yes, you did.

Q Did I not say, "Arnold, don't you remember getting paid and giving me a receipt"?

A No.

Q You don't remember that?

A No.

Q But you do remember that I claimed I paid the trip?

A Yes.

Q Now, you testified that I suggested to you that you go along with that, or something to that effect?

A You said you had a problem with the London trip and that you felt that we could show that it was paid. You said that you had a problem with the London trip and requested that we show that it was paid in our records and

I said I could not.

Q Now, we had already discussed over the telephone that there was a problem whether you suggested there was a problem or I suggested there was a problem, you don't remember, do you?

A No, I don't know who brought it up.

Q And what did I say to indicate to you that I wanted you to show that it was paid in your books?

A I don't recall your exact words.

Q Try your very best, please, Mr. Tolkin.

A You said to us that we should try and show in our records -- we showed you the records that we had at the time and you said, "Isn't there any way that you could indicate payment," and I said, "We could not." I said, "The books were closed for that particular year and we couldn't go back and change it."

Q I think you testified to Mr. Drucker that you couldn't do that because that wasn't true?

A That's true.

Q Isn't that what you testified to?

A Yes, sir. When?

Q When somebody asked you for this invoice, Mr. Tolkin, you sent it, didn't you?

A Yes, sir.

1516

Q Was ittrue?

A As an estimated invoice, it was.

Q And an invoice is something to be paid, Mr. Tolkin, is it not?

A Not necessarily.

Q Not necessarily?

A No.

Q I see.

A There are estimated invoices sent out on cost of travel.

Q When you said you couldn't --

MR.DRUCKER: I'll object to these "I see's and uhms" that Mr. Cahn --

THE COURT: That's a mannerism, it's a little different with Mr. Cahn being a party as well.

MR. CAHN: I don't mean to be offensive to MR. Drucker.

MR. DRUCKER: That's not the nature of my objection.

THE COURT: Stop.

Q By the way, Mr. Tolkin, do you remember me saying to you that "If this involved a personal trip of mine Hell would freeze over before I give you a dime but since this trip involved the County I'm personally responsible."

A No, I do not.

Q The trip involved the County?

A It involved the National District Attorneys Association, this particular trip to London.

Q But as far as the defendant William Cahn is concerned, it involved the County.

THE COURT: The witness can answer if he knows.

A I don't know if it involved the County at that point. You were District Attorney of the County when the trip took place.

Q Do you remember the form of the $50 down payment and the $345 payment, would that indicate --

A It's not indicated here.

Q But do you remember it as to how they were paid?

A No, sir.

Q Wasn't it a County check?

A It could have been.

Q What is the date of the $50 payment, Mr. Tolkin?

A November 1.

Q Of what year?

A 1971.

Q I show you Government's Exhibit 60-B and ask you if you will read check #749.

1518

A Group Consultant Limited CATS, deposit for Cahn law enforcement trip London, A,R.

Q Would that refresh your recollection as to whether or not the check was paid by a County check?

A That's a County checkbook?

Q Yes.

A Could be.

Q Now, I gave you acheck thereafter you stated?

A Yes, sir.

Q What did I tell you when I gave you the check?

A You said in going through your files you found that you still handn't paid for that trip and you gave us a check and said you could deposit it for payment.

Q Mr. Tolkin, you told the Court and jury that when I came to you I said to you, "Look, Iwas under the impression I thought that this trip was paid, I thought I paid the trip." Right?

A Yes, sir.

Q Now, you are saying when I gave you the check I said to you, "I found that I didn't pay it."

A Yes.

Q But I gave you the check that same night, did I not?

A Yes, sir.

Q Again I ask you when I gave you the check, didn't I say to you, "Arnold, if it was a personal trip Hell would freeze over before I would give you another dime but since it's a County trip I'm personally responsible so here's a check."

MR. DRUCKER: Oojection, asked and answered.

A No.

MR. DRUCKER: Withdraw the objection.

THE COURT: Overruled.

Q That's not so?

A No.

Q I told you "Here's the check," because in going through my desk I found out I didn't pay it.

A Yes.

Q Now, did you say anything to me when I gave you the check?

A I said I couldn't take the check.

Q You couldn't take the check?

A I couldn't deposit the check.

Q Which was it, Mr. Tolkin?

A I couldn't deposit the check.

Q If Mr. Theodore said we didn't want to take the check, would he be incorrect?

A No.

Q What was said?

A We didn't want to take the check. You said, "Look, see what you could do."

Q Why didn't you want to take the check?

A Because the trip as far as we were concerned was a complimentary trip so our records were closed, the records were at that point open for inspection. I wasn't going to try and change them.

Q Did anybody ask you to change the records when I gave you this particular check or didn't I say, "Here's payment of the bill."

A But there was no payment in the bill forthcoming. The invoice was only an estimated invoice, it wasn't a correct invoice.

Q What was your 895?

A That was the loss of profit for two people on the trip to London and Europe.

Q And so when I offered you the check --

A The check had no relation --

Q I didn't finish my question.

When I offered you the check, you decided that you weren't going to accept the loss of a profit?

A We could not take the check, the check had no relation to the trip at that point.

1521

Q Why didn't it have any relation? Couldn't your books later on in 1974 had reflected that this was a payment of the loss of profit which your books indicated in 1971?

A But this was not a true invoice and the loss of profit was based on two people sharing the trip.

Q This was not a true invoice.

MR. DRUCKER: I think we have been over that.

THE COURT: You have covered that.

A This is an estimated invoice, it's not a true invoice. We weren't expecting payment on this invoice.

Q But your books showed it?

A Our books did not show this invoice; no.

Q Your books showed 895?

A 895, loss of profit.

Q I suggest to you, Mr. Tolkin, when you told me about an outstanding bill for London, the outstanding bill was $1,050 and that's why that check is made out in the amount of $1,050.

THE COURT: What is the question?

Q Isn't that true?

A The check matches the invoice; yes, sir.

Q What did you do with thecheck after you didn't want to take it?

A I first called my attorney and then put it in the drawer, stamped so nobody in my office would possibly get at the check and deposit it.

Q Nobody in the office could possibly get it and deposit it?

A Yes; and anybody going through might see an empty check might take it, they didn't know what it was for, it was December, 1974.

Q I suggest to you, sir, that the check reads for deposit only, ATS Travel Limited.

A But as long as it was in my drawer nobody would get to it.

Q If it was in your private drawer without this stamp --

A My drawers are not locked, someone could pull it out, stamp it and deposit it.

Q And if it was deposited, if it was stamped that couldn't happen?

A If it was stamped they would question why a stamped check was sitting in my drawer.

Q But nobody would question why an unstamped check would be in your drawer?

A If they found it in the drawer they might call you and find out why we had that check.

Q Did you ever call me about the check?

A To tell you that I couldn't deposit it.

Q Did you returniit?

A My attorney spoke to you, I believe.

Q Pardon?

A My attorney spoke to you, I believe.

Q Did you return it?

A No.

Q Did we ever discuss the check?

A Only to the extent that I told you that I could not deposit it.

Q Mr. Tolkin, do you remember January 10, 1975, a luncheon at the Westbury Manor?

A I recall a luncheon at Westbury Manor sometime around that time.

Q Isn't it true, Mr. Tolkin, that you told me at that time you tore up the check?

A No, I told you that we didn't deposit the check. I don't think I was specific as to what we had done with the check.

Q Why did you keep it?

A I kept it because I was getting into a situation that was way over our heads, I wasn't going to get involved. I couldn't get involved.

Q Why didn't you return it?

A Because I didn't think it meant anything as faras we were concerned, it covered an invoice which was only an estimated invoice, had nothing to do with the trip.

Q If it had nothing to do with the trip, Mr. Tolkin, why didn't you return it?

A Because I didn't know how far this whole situation was going and I was concerned -- and I felt the best thing to do was to hold on to the check because at this point the game -- you would ask us to take it in and I wasn't going to take it in.

Q You testified before the grand jury?

A No, sir.

Q Did you speak to Mr. Drucker or Mr. Goldman prior to February of 1975?

A Prior; no, never me them until after this whole thing started.

Q When was the first time that you ever spoke to Mr. Drucker or somebody from the U.S. Attorney's office?

A Just before the first trial.

Q Did you mention the check?

A No.

Q Didn't say anything?

A No.

1525

Q May I ask you why, sir?

A Because I didn't want to hurt you.

Q You didn't want to hurt me?

A No.

Q If you didn't want to hurt me, why didn't you return the check?

MR. DRUCKER: I think this has been gone over several times.

THE COURT: Objection sustained.

MR. CAHN: This is in a different context, your Honor. Now, he said he didn't want to hurt me and I would like to know --

THE COURT: He answered it already; it is the same question.

Q But you didn't want to hurt me enough to tear up the check?

MR. DRUCKER: Objection as to being argumentative.

THE COURT: Overruled.

A I didn't want to tear up the check. I didn't know where this whole thing was proceeding and I wanted to keep myself as clean as possible and that check showed something which was wrong.

Q With you or with me?

A With you in attempting to give it to me to

cover an estimated invoice.

Q I see.

A Which you knew was an estimated invoice bill.

Q Were you told, Mr. Tolkin, that as long as you told the truth nothing that you would say would be used against you by Mr. Drucker or Mr. Goldman? Were you ever told that?

A I'm telling the truth now.

THE COURT: Were you told that nothing would be used against you if you told the truth?

A I don't recall. We were just told that we had to tell the truth. My attorney told me we had to leave all of our records open. We decided that's the way we had to go.

Q Your attorney told you that?

A Yes.

Q But you didn't tell Mr. Drucker about this check, did you?

A No.

Q Now, let's see. There were some complimentary trips you talked about, Yugoslavia?

A Yes.

Q That was just a couple of weeks in Yugoslavia, it was a week in Rome, Italy, first?

A Yes.

Q And that had nothing to do with the NDAA or any municipal or county function?

A No.

Q That was strictly social?

A Yes, just made up of members of the District Attorney's office but otherwise it was just a social trip.

Q May I suggest the Chief Judge of the Appellate Division, Judge Galata, was on that trip?

A Yes, sir.

MR. DRUCKER: The Government makes no impropriety to either of those trips.

MR. COHN: Well, thank you.

There was no trouble with the complimentaries on those trips, were there?

A No.

Q And yet there was seminars that we ourselves held on that trip, was there not?

A Yes, there were seminars.

Q With law enforcement officers in Rome, Italy?

A Yes.

Q And law enforcement and judges in Nebrovnik, Yugoslavia?

A I believe so.

Q There was no problem with the complimentary

trips insofar as Spain was concerned the year before?

A No, sir.

Q And that was a group from pretty much all over, was it not, Mr. Tolkin?

A They were from Nassau mostly.

Q But there were some people from Michigan and some people from outside New York State?

A Yes, sir.

Q And that too was a social trip?

A Yes, sir.

Q Buton that trip too we allowed for --

A There were discuysion groups.

Q There was no problem in reference to that complimentary trip, was there?

A No.

Q And isn't it a fact that you informed me on those trips that it was the airlines that work out these complimentary trips insofar as tour guides or people that arrange them were concerned?

A The Spain trip was through a wholesaler, you get one free for every 40 people you book, it was provided.

Q And the Italy-Yugoslavia trip?

A Same type of trip.

Q So this was no problem; is that correct?

A Yes.

Q It was a social trip, was it not?

A For the most part it was social.

Q The problems that you were concerned about when you called me, as you testified, was the London trip?

A The problem that I was concerned about we were being innocently involved in some things that I had no notion of.

Q You were innocently involved?

MR. DRUCKER: I think that was the answer.

THE COURT: Any redirect?

MR. DRUCKER: No.

THE COURT: We'll take a 10-minute recess. The jury may go back to the jury room and don't talk about the case . You are excused, Mr. Tolkin.

(Whereupon, a short recess was taken.)

(After recess.)

THE CLERK: One-page document marked Government's Exhibit 81 for identification.

(Whereupon, thejurors re-enter the courtroom, and are now seated in the jury box.)

THE COURT: Mr. Drucker, your next witness.

MR. DRUCKER: I'm going to offer in evidence a document marked Government's Exhibit 81 for

identification. Again, it's with the understanding it's not offered for the truth or falsity of its contents, only the portion underlined in red is offered, and with the further stipulation that a representative of Newsday -- that this article appeared in Newsday on January 28, 1970, and there is no waiver with regard to any further articles that might be offered by the Government.

MR. CAHN: That's correct.

THE COURT: And you'll read just the portion in red.

MR. CAHN: Along with that, the Government has stipulated that Mr. Tolkin -- correct me -- will testify that after receiving a call from Gladys Mattsen in reference to the bill at the Americana Hotel in San Juan, he called Mr. Munoz and told him that the inspection trips for Mr. Cahn, the defendant was supposed to be complimentary pursuant to Mr. Munoz's testimony.

THE COURT: All right, the jury can consider that as a part of the fact.

MR. DRUCKER: The article dated January 28th, 1970, reads in pertinent parts as follows:

"The roundup was the first major action in

an investigation initiated last November by Nassau Rackets Bureau Chief Norman Levy following establishment of a second mob grand jury. Since November, Levy has interrogated more than 80 mob members and associates in an attempt to pinpoint business infiltration by the mob in Nassau, and to determine the fates of mobsters Frank Mari and Michael Adamo."

THE COURT: What is the date of that?

MR. DRUCKER: January 28, 1970.

J O A N N E B L O O M, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Miss Bloom, tell the jury the place and nature of your employment.

A Fiat Allis Construction in Carroll Stream, Illinois.

Q Before that where were you employed?

A Wheaton Travel Agency.

Q What period of time were you with Wheaton?

A From 1970 through 1975.

Q Generally speaking, what was the nature of Wheaton's business in 1970 to 1975?

A Well, I was with them, we handled domestic travel and international travel and the department I worked in was convention and tours.

Q I take it you would make travel arrangements from time to time for various groups, conventions, tourists and pleasure groups.

A Yes.

Q Was the Nassau County District Attorneys one of the groups that you made arrangements for from time to time?

A Yes.

Q Going back to March of 1971, do you recall whether Wheaton handled a trip to Honolulu, Hawaii?

A Yes.

Q With regard tohotels, did you make any arrangements in Hawaii?

A Yes, we booked rooms at the Sheraton-Hilton Hotel.

Q Did you handle the room reservations for William Cahn?

A Yes.

Q And are you certain of that?

A Yes.

Q And who was that through?

A Through Mr. Cahn.

Q And did you also handle the room reservations for Mr. Paul Popademis?

A Yes.

Q Who was that through?

A Mr. Popademis requested that.

Q Now, will you tell the jury, as best you can, what arrangements, if any, were made prior to the trip with regard to whether or not Mr. Cahn's room was to be paid for?

A For VIP;s attending the convention, ViP of the Nassau District Attorneys Association, they were given complimentary suites at the Sheraton Surf Rider.

Q Prior to the trip, did you have discussion with Mr. Cahn relating to this?

A Everybody that I knew of knew of the complimentary rooms.

MR. CAHN: Objection, I'll ask that that be stricken.

THE COURT: The jury please disregard that. The question was whether you had spoken to Mr. Cahn about that.

THE WITNESS: I can't personally remember if I spoke to him.

1534.

Q Did you talk to representatives of the Nassau District Attorneys Association?

A Yes.

Q Have you handled trips for the Nassau District Attorneys Association?

A Yes.

Q And on these trips, does the president and president-elect get a complimentary room, or does he have to pay for his room?

MR. CAHN Objection.

THE COURT: Overruled.

THE WITNESS: They get complimentary rooms.

Q Was this the case back in March of 1971?

A Yes.

Q Now, did the Sheraton Surf Rider or anyone else for that matter send you any bills for any of the rooms in Honolulu?

A We had a master account at the Sheraton Surf Rider and their invoices from the Sheraton Surf Rider came to us directly. When I got back to the office I checked them against the Wheaton Travel invoices to make sure that everything balanced out, if there were any additional balances billed to the client.

Q Was Mr. Cahn's room billed to you?

A It was complimentary.

THE COURT: Was it billed to you?

THE WITNESS: We received a bill but there were no charges because it was free.

Q How about Mr. Popademis?

A Mr. Popademis had charges on it which we paid off on the master account since we already received Mr. Popademis' payment.

Q He had paid for it?

A Yes.

MR. DRUCKLER: I'll ask that these three documents be marked as a group for identification.

THE CLERK: So marked Government's Exhibit's 82.

Q Showing you these 3 documents, I'll ask if you can recognize them?

A Two of them are for air fare and hotel fare at the Sheraton Surf Rider; the other two are for his other side trip to California.

Q Who is he?

A Mr. Popademis.

Q Do you have his room bill with you?

A Yes, I do.

Q The original? Take a look at that and see if

you are able to determine by conparison of those documents I place before you whether or not that room bill was paid?

A Yes, I t was.

Q In full?

A Yes.

Q By whom?

A By Mr. Popademus.

Q Is that the original bill or a copy?

A Well, it's a carbon of the original tnat the hotel sends to us when we have a master account which means we wroto a final check for all the rooms.

MR. DRUCKER: I would like to offer these documents in evidence.

THE COURT: Show them to Mr. Cahn.

(Showing documents to Mr. Cahn.)

MR. CAHN: May I inquire, sir?

THE COURT: On voir dire.

VOIR DIRE EXAMINATION

BY MR. CAHN:

Q Mrs. Bloom --

Is this marked, Mr. Drucker?

MR. DRUCKER: Mark it 82-A for identification.

THE CLERK: So marked.

Q I show you Government's Exhibit 82-A for identification and ask you did you testify that your

records indicated that Mr. Popademus paid the Sheraton Surf Rider Hotel or you?

A He paid us. We paid the Surf Rider Hotel.

Q And these checks represent payment to Wheaton Travel; is that correct?

A Correct.

MR. CAHN: No objection.

THE COURT: Let them be marked.

THE CLERK: Documents so marked in evidence.

DIRECT EXAMINATION

BY MR. DRUCKER: (Continued)

Q Now, you just testified that you paid the Surf Rider Hotel after Mr. Popademus paid you?

A Correct.

Q And did the Surf Rider Hotel return your check? Did they send them back to you, anything to the effect that we are sorry but this room has been paid for?

A No.

Q The check went through?

A Yes, the billing that you have there was received after the convention, that invoice from the Surf Rider, the room was filled and we paid for it.

Q Did you ever recieve a check from Mr. CAhn for his room?

A We received $50 for registration fee, which

is for the Nassau District Attorneys Association and $50 for his wife which is for the registration fee.

MR. DRUCKER: May this be marked for identification also.

THE CLERK: Two-page document marked Government's Exhibit 83 for identification.

Q Mrs. Bloom, this is a document which you brought with you today, is it not?

A Yes.

Q Is that a copy of a business record of Wheaton Travel Agency kept and maintained as such?

A Yes.

Q What is it?

A It's a letter to Mr. -- or sales manager requesting the complimentary suites for the convention.

THE COURT: From who?

THE WITNESS: From Wheaton Travel asking for the complimentary suites or indicating who the complimentary suites will be assigned to.

Q To whom?

A Mr. William Randolph, President; Mr. and Mrs. William Cahn, present President, and Mr. and Mrs. Patrick Healey.

MR. DRUCKER: I'll have it marked.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 83 marked in evidence.

Q Is it at all possible, Mrs. Bloom, that Mr. Cahn booked his room at the Sheraton Surf Rider through some other agency and you didn't know about it?

A We would have been notified by the hotel. At the time it was our understanding that all rooms were held by Wheaton Travel.

Q Were you ever notified anything to the contrary?

A No, we received our confirmation that the complimentary was held and Mr. Cahn occupied it.

MR. DRUCKER: Thank you, no further questions.

CROSS-EXAMINATION

BY MR. CAHN:

Q Government's Exhibit No. 83 in evidence, Mrs. Bloom, indicates that the letter to the sales manager was sent March 4, 1974; is that correct?

A Yes.

Q Now, do you remember -- do your records indicate that Wheaton Travel booked the air fare?

A Originally we had and then we have a refund notice for the air fare -- for your air fare.

Q So you didn't have anything to do with my

air fare for -- from New York City?

A No. We had a ticket for you but then it was cancelled.

Q And the fact of the matter is that a reservation for room s was paid by me to Wheaton; isn't that correct?

A YES.

Q And at the time that that reservation was made there was also the fact existing that Wheaton was to handle a group traveling from New York; wasn't that correct?

A We handled anybody from New York who wanted to go.

Q I understand that.

A I did not know of any special group.

Q You have no records?

A Not of any special group from New York. Any District Attorney or anybody who wanted to go we would handle their arrangements.

Q You didn't know of any group that was to be formed from —

A I believe at one time you had mentioned to our office that you could get some people together to go but nothing came of it. We wouldn't have any records on things

that didn't happen if we didn't receive any registration forms on them.

Q You are certain, Mrs. Bloom?

A I have no record of it.

MR.CAHN: I'll ask that this be marked for identification.

THE CLERK: Two-page document marked Defendant's Exhibit T for identification.

Q Do you know Lawrence Stevens?

A Yes, I do.

Q He at this time was in charge of this trip, was he not?

A He was the Executive Vice President at Wheaton Travel.

Q I show you Defendant's Exhibit T for identification, and ask you to read it and see if that refreshes your recollection.

A Yes, but that does not indicate a special group. That is a special fare from New York. If you get 15 passengers on a plane you could get a tour conductor pass. We told your wife this but it does not mean that these people are specially traveling -- they are a group on the plane but we had several groups.

Q Wasn't there supposed to be a group from New

York, that's what I mean?

A You are talking in terms of outside the travel agency? When we talk of a group in a travel agency field that is meant as a separate organization, so I misunderstood your question.

Q Here's another copy of Defendant's Exhibit T but in addition to that, are these names not listed on Beacon Travel stationery?

A Yes.

Q And wasn't that the group that was to be formed?

A Well, I don't know if it waS to form, but people flying out of New York --

Q And on the basis of that there was a tour guide to be issued to Mrs. Cahn?

A Yes, that's the only way we could give her a complimentary ticket.

Q But that never went through?

A It did but it was obviously cancelled because we have no further records on it. You did not use our services for air fare.

Q It was cancelled because 15 or 16 people didn't show up?

A I have a letter that says 15 people did show up.

Q You do?

A Yes, sir; and one from Mr. Healey also dated -- "As we understand it we'll provide a complimentary ticket -- "

Q And what is that dated?

A February 16.

Q And thereafter there wasn't 15 and Mrs. Cahn and that group did not travel together.

MR. DRUCKER: If she knows that happened, and that's the reason for whatever happened.

Q You don't know?

A I don't know.

Q In any event, you have no records indicating that Mrs. Cahn or the defendant William Cahn was booked through Wheaton Travel?

A For air fare, right; for hotel, yes.

Q Now, do you remember when the hotel room was booked?

A The original registration form came in -- let's see. I have a letter we sent our confirmation to you on November 17. You had sent us a letter saying "Enclosed please find reservations for the Nassau District Attorneys Association -- " and that's whenwe first had your reservation form to decide to go.

Q Would that indicate to you that I was to pay for my room in Honolulu?

A At that time we had no knowledge of complimentary suites.

MR. CAHN: Now, I ask that this be marked for identification.

THE CLERK: One-page document marked Defendant's Exhibit U for identification.

Q I show you, Mrs. Bloom, Defendant's Exhibit U and ask you if Wheaton received a copy of that letter?

A Yes, on the bottom it says -- carbon copy, Wheaton TRavel.

MR. CAHN: Offer it in evidence.

MR. DRUCKER: I have no objection.

THE COURT: It may be marked.

THE CLERK: Defendant's Exhibit U marked in evidence.

Q "Mr. William Cahn, District Attorney, Nassau County, New Court House, Mineola, New York, 11501.

"Dear Bill: Confirming our conversation today, I have instructed the Wheaton Travel Agency to issue a complimentary air ticket from New York to Hawaii. As I explained to you, if you book through Wheaton and stay at Surf Rider -- " and Mrs. Bloom, there

was no complimentary ticket issued to Mrs. Lynne Cahn.

A It was cancelled, it never went through. You would have to verify with the air line.

Q Now, I show you Government's Exhibit 82-A in evidence, Mrs. Bloom. Could you tell me or do your records reflect when you received that bill from the Surf Rider?

A Only on recollection, following the convention. I don't have records at hand that state exactly when but they were after the convention.

Q If I stated that arepresentative of the Surf Rider stated the bill went out April 2nd, would that refresh your recollection?

A I couldn't say for sure if it was April 2nd but that would be following the convention.

Q I show you Government's Exhibit 64 in evidence and ask you which exhibit is Government's Exhibit 82-A in evidence a copy of , do you understand what I'm talking about?

A Yes, sir.

THE COURT: You want to know if this one matches either one of these?

MR. CAHN: Yes, sir.

A Well, these two match and since the top of this is not ligible at all, everything else matches all the

way down.

Q You said these two match?

A Yes.

Q Mrs. Bloom, you have indicated Government's Exhibit 64-A in evidence and Government Exhibit's 82 in evidence, now I'll ask you to look again closely and ask you if they match.

MR. DRUCKER: In what regard?

MR. CAHN: Are they copies? Is Government's Exhibit 82-A a full copy of Government's Exhibit 64-A?

A O.K. This has zeros on it, this one doesn't, that's because that's our agency copy of what our bill was; and this is the copy that's for when they tell me -- when they come to check out.

Q I don't want to confuse you. Government's Exhibit 82-A has Surf Rider. Does Government's Exhibit 64-A have that?

A But I would imagine this is a Surf Rider copy.

Q I understand; Government's Exhibit 82-A has Sheraton Hotel and Motor Inn on the lower right-hand corner. Does Government's Exhibit --

MR. DRUCKER: I think the exhibits speak for themselves.

THE WITNESS: You could say this is paper and cardboard, you know.

Q I understand but they are exact copies?

A No; but when you have a form, the second and third pages are never copies.

Q I'll ask you whether Government's Exhibit 82-A is an and can be an exact copy of Government's Exhibit 64-A?

A Except for Mr. Popademus' name, escept for the number, other than that they match.

Q And Mr. Popademus' name is not -- the printing in the upper left-hand corner is not --

A This is the computer and this is the typewriter.

Q The name is a typewriter and the bill is a computer?

A That is themethod in the hotel to compute the bill.

Q Do you know whether Mr. Popademus checked out of the hotel?

A I personally didn't see him check out.

MR. CAHN: Thank you very much.

THE COURT: Any redirect?

MR. DRUCKER: No further questions.

THE COURT: Thank you, Mrs. Bloom.

MR. DRUCKER: The Government calls Mr. Nicholas George Papademus.

GEORGE PAPADEMUS, called as a witness, having been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Mr. Papademus, where do you live?

A In Lebanon, New Hampshire.

Q Will you tell the jury, please, the place and nature of your present employment?

A I'm a part-time District Court Judge in Lebanon, New Hampshire, which is a Court with limited jurisdiction and I also practice law.

Q Part-time judge and part-time attorney; is that right?

A Yes.

Q Now, are you also a member of the National District Attorneys Association?

A I was when I was a prosecutor.

Q How long were you a prosecutor?

A Four years.

Q What years were those?

A January 1, 1969, to January 1, 1973.

Q Judge Papademus, while you were a prosecutor, did you have occasion to travel to conventions or meetins

of the National District Attorneys Association outside of New Hampshire?

A Yes, sir.

Q I'm directing your attention back to March of 1971, did you attend a convention of the NDAA in Honolulu, Hawaii?

A I did.

Q Did you go alone or were you accompanied by anyone?

A My wife and my two daughters came with me.

Q Where did you stay while in Honolulu?

A At the Surf Rider Hotel.

Q Was your room at the Surf Rider supposed to be before you rent a free room, supposed to complimentary?

A Oh, no.

Q And did it develop that it was a free room at any time?

A No.

Q You paid for it, sir?

A Yes, I prepaid.

Q I show you Government's Exhibit 82 in evidence and I ask if you recognize those, of being checks of yours?

A These are my checks.

Q In payment for that trip?

A Yes, sir.

Q Now, showing you part of Government's Exhibit 64-A in evidence, documents which read registration card, room 1484, 1486. Directing your attention to the lower left-hand quadrant, I ask you if you recognize the signature on it?

A That is my signature.

Q Did you sign it when you checked in to the Sheraton Surf Rider?

A Yes.

Q And did you stay in those rooms?

A My wife and I stayed in one room and my two daughters stayed in the other room.

Q Do you know the defendant William Cahn?

A Yes, I do.

Q Did you let Mr. Cahn use your room at the Surf Rider on that occasion?

A No.

Q Did you give Mr. CAhn any copies of your room bill or invoices of your room bill?

A No, sir.

Q You personally paid for the room; is that right?

A Yes.

Q In full?

A Yes, sir; and this was done before we went on the trip.

Q Now, did you have occasion in the years 1970 to 1974 to travel to Las Vegas either on personal business or pursuant to NDAA business?

A I went to Las Vegas to attend an NDAA meeting in March of 1972.

Q Did you go there on any other occasion?

A I went to Las Vegas in April of 1974 but nothing to do with the NDAA.

Q Mr. Papademus, do you recall seeing the defendant William Cahn on either of those occasions?

A Yes, I do.

Q With regard tothe first occasion, that being in 1972, where did you see him?

A This was a meetingof the general membership of the NDAA and I saw him about the building, the hotel we were in. I saw him at various meetings. I also saw him at thecasino.

Q And was that casino at the Hilton?

A Yes.

Q What was he doing, do yourecall, in the Hilton casino when you saw him?

A Like many of the rest of us, gambling there.

Q And what were you playing at that time?

A Blackjack.

Q And what stakes were on that table that you were playing on?

A I was playing $2.

Q Was it a $2 table?

A Yes, it was.

Q To your knowledge, is that a minimum or maximum?

A Minimum of $2.

Q Was Mr. CAhn playing at the same table which you were at?

A Yes.

Q Do you recall what he was playing at that time?

A At that time he was playing $100 bills.

Q Did he have a few or many hundred dollar bills in front of him?

A Two occasions I saw him, the first occasion was in March of 1972, playing blackjack, he was playing with $100 bills. I don't recall whether he had a few or many but he was playing $100 bills.

Q How about on the second occasion?

A There he did have a handful of $100 bills.

Q Could you describe his demeanor on that occasion?

A On that occasion he was much easier to notice him. There were only three of us at the table and he had -- his demeanor -- he was upset and agitated and angry.

Q Was there anyone else with him?

A There was another man with him who I don't know.

Q Do you know what conversation they had, if you recollect?

A The man was trying to get him to quit playing.

Q Was he successful?

A No.

Q And what was he saying to Mr. Cahn?

A "You've lost enough, quit." Words to that effect.

Q And I take it, Judge, of your own personal knowledge, you have no idea whether Mr. Cahn was winning or losing money; is that right?

A The second occasion, it was obvious to me he was losing because of his agitated nature and angry. He would play, he would drop down a $100 bill, it was noticeable that he was angry.

Q And these weren't $2 chips?

A They were $100 bills.

MR. DRUCKER: Thank you.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Papademus, how long were you a member of the National District Attorneys Association?

A I would say about 3 years, Mr. CAhn.

Q Not 4 years?

A About 3 years. The last 3 years while I was a prosecutor. I didn't join right away.

Q How many meetings of the National District Attorneys Association did you attend?

A I think about 6, 7, 8; San Juan, Las Vegas, Phoenix, Chicago, Honolulu, New York, that's all I recall.

Q And you were State Director from New Hampshire?

A Yes.

Q And you attended the meetings of the board?

A Yes.

Q How long would you attend those meetings?

A I was director I think I took in all of them.

Q When you got there how long did you stay?

A Practically all the meetings.

Q Isn't it a fact that you signed in and in a short while walked out?

1555

A On the Phoenix meeting I walked out.

Q Other meetings too?

A No. Excuse me. The meeting that was here in New York I think recessed and convened in London. I did not go to London.

Q I'm talking about the board meetings itself, where there is a piece of paper, a list handed around to those who are present, and may I suggest that you signed that list and very shortly thereafter left the meeting?

A That's not true.

Q Did you know me very well?

A No.

Q And in 1972 in Las Vegas I was the president of the organization?

A You were president, one of those years, Mr. Cahn, I don't recall which year.

Q And as president of the organization I ran the Board of Directors, did I not?

A Yes, you did.

Q Now, let's see when you left Honolulu, did you check out?

A We left --

Q Did you check out, Mr. Papademus?

A Yes, we did. We turned in our keys, we were

all paid.

Q Did you go over to the cage and say, I'm Mr. Papademus of 1484 and 1486, I'm checking out?

MR. DRUCKER: I think Mr. Cahn means cashier, rather than cage.

Q Well, cashier's cage.

A I think I did. I have no indidivudal recollection of it.

(Continued next page.)

Q Who did you tell?

A The desk.

Q You went to the desk and you left your key?

A Yes, sir.

Q But you had prepaid your bill, did you not?

A Yes.

Q And may I suggest, sir, that you didn't check out at the cashier?

MR. DRUCKER: I am going to object to the repeated form.

THE COURT: It's a question, I take it. You could answer again, Judge Papademus.

A I'm pretty sure I checked out by giving them my keys and they checked my bill and everything was fine.

Q You're not sure, though?

A I'm not positive; no.

Q Now, in March of 1972, where did you see me in Las Vegas?

A At the District Attorneys' meeting at the Hilton.

Q And you were attending the National Convention there, were younot?

A That's true.

Q That was where, sir?

A At the Hilton Hotel.

Q Do you remember testifying previously? At that particular time what was I betting?

A $100 bills, Mr. Cahn.

Q How many $100 bills did I have in my hand?

A I don't know.

Q You don't know?

A No.

Q Were you at the table?

A Off and on. I did watch you, it was unusual --

Q Not because, were you at the table, sir?

A Off and on.

Q And when you were at the table you were betting?

A I played, yes.

Q Nothing wrong with that even part-time judges gamble?

A Nothing wrong with that.

Q But you don't know how many bills were in my hand?

A No.

Q Do you remember testifying before?

A Yes, I do.

Q Do you remember these questions and these

answers: "Where did you see the defendant William Cahn at those meetings at the Hilton --" Let me go back further to refresh your recollection as to the date we are talking about, if you will, Mr. Papademus.

"Question: And when was the first time, to the best of your recollection that you saw him in a casino and where?"

MR. DRUCKER: What page?

MR. CAHN: 1681.

"We had a general membership meeting in Las Vegas at the Hilton, I believe it was March 1972.

"Question: Do the dates March 11 to March 17 of 1972 refresh your recollection as to exactly when it was, sir, or about that time?

"Answer: About that time. I know we still had winter in New Hampshire and it was warm in Las VEgas.

"Question: Where did you see the defendant William Cahn?

"Answer: At thosemeetings at the Hilton.

"Question: Did you see him in the casinos at all?

"Answer: Yes.

"Question: What was he doing in the casino?

"Answer: He was playing blackjack.

"Question: Were you able to observe whether or not he was betting with chips or with something else?

"Answer: He was playing with money and he was playing big money.

"Question: How long, sir?

"Answer: $100 bills.

"Question: And more than one, to the best of your recollection? First of all, did you see him bet more than $100 on any one occasion?

"Answer: He was betting money, he was holding handful of $100 bills, 25, 30, just kept betting $100 bills."

Do you remember those questions and those answers, Mr. Papademus?

A Yes, I do.

Q Do you remember me having 25 or 30 $100 bills in my hand in March of '72, or are you correct now when you say you don't know how much I had in my hand?

A Actually I don't know the exact number. I do know that you were holding a handful of $100 bills, and my figure is 25 or 30, just an estimate on my part.

Q You didn't estimate today, sir, did you?

A I don't think so.

Q You said you didn't know how many?

A I still don't know.

Q So when you testified before as to 25 or 30, that was not correct?

A That was my estimate. I believe my estimate is correct.

Q How would you arrive at that estimate?

A Pile of $100 bills were fanned out like one holds cards and kept shuffling them.

Q I give you some bills. Will you show this jury how I was sitting at the table betting?

A You were sitting at the table and you kept shuffling dollars back and forth and you were holding them this way (indicating) and I was able to observe they were $100 bills and primarily because I call that heavy gambling.

Q And when you say I fanned them out, show the jury how I fanned them. Here. (Handing U.S. currency to witness.)

I was sitting in a table in Las Vegas with $100 bills fanned out?

A In that fashion, yes, sir.

Q At a table where you were betting $2?

A That's correct.

Q There are also $5 tables in Las Vegas?

A Yes.

Q There were also $25 tables?

A Yes.

Q Isn't it a fact, Mr. Papademus, that all casinos frown on the use of cash?

A Oh, no.

Q No? You have been there engough to know that they don't frown on the use of cash at the blackjack table?

A I know they allow a person to play with money but when a person wins they pay in chips, and when he loses they take the money and they deposit it in their deposit box and usually when a person plays with money the dealer or whoever is in charge of the game says, money, place, he announces it.

Q He announces it. And isn't that because that's unusual?

A I've seen many, many who play with money. I don't know what's unusual about it.

Q But when you saw it, you heard the dealer say money, place?

A That's correct.

Q Was anyone with me on this March 19, '72, trip?

A I think there was a lady with you. I think

it was Mrs. Cahn, I'm not sure.

Q And was she at the table with me?

A I have no recollection of that.

Q Do you remember what time it was?

A In the evening, Mr. CAhn, during the day we usually had a full program of activities.

Q Now, the second time you saw me, where did you see me?

A At the Hilton Hotel in April of 1974.

Q Now, you are quite sure it was the Hilton Hotel?

A That's correct.

Q If I told you that the evidence here indicates that I was staying at the Dunes, would that make a difference to you?

A No, I saw you at the Hilton.

Q When you saw me at the Hilton the second time, were you at the same table with me?

A Yes, and I was surprised because I recognized you; you didn't recognize me and there was only three of us at a table, you, another man sitting together and I was sitting on the opposite end of the same table.

Q You recognized me and I didn't recognize you?

A That's correct. I was going to speak to you

but you were quite agitated about your game.

Q You didn't speak to me at that time?

A I did not.

Q And you were at the same table?

A Correct.

Q I ask you if you remember these questions and these answers from your last testimony. Page 1682, Mr. Drucker.

"Question: Did you have occasion to see him in the same or any other casino at any time later on, any later occasion?

"Answer: I believe it was in April of 1974 and this was very coincidental. I stopped in Las Vegas for a day and he was playing blackjack practically at the same table."

What does that mean?

A It was the same table, Mr. CAhn.

Q What does practically at the same table mean to you, Mr. Papademus?

A It's obvious I used the wrong word in my previous testimony, but it was the same table.

Q By the way, each time when you saw me at that particular time, how many $100 bills did I have in my hand?

A When I described that you had 25, 30 $100 bills that was the occasion I was referring to; April of

'74.

Q And you were able to tell it was 25 to 30 because of the fanning out?

MR. DRUCKER: I think we have been over this.

MR. CAHN: This is April of '74 now.

THE COURT: It's the same incident. I'll let you ask it.

A As I indicated earlier, this is just my estimate. I didn't count them obviously.

Q When you got to the tables, Mr. Papademus, was I already there?

A That's correct.

Q Do you know whether or not the monies in my hand represented winnings?

A I have no way of knowing that.

Q And if the April of 1974 meeting with me is what you were referring to when you said 25 to 30 $100 bills, let me ask you again, how many did I have in my hand in March of '72?

A I don't know.

Q When did you first relate this to the U.S. Attorney?

A I believe it was in December of 1975 when I received a telephone call.

Q Yes?

Mr. DRUCKER: I think the question has been answered.

Q And at that time, what was said to you and what did you say?

A Inquiry was made about our trip to **Hawaii**. I indicated my recollection of it and how I had paid for it. I knew who you were, that I had seen you at various meetings we had with the NDAA; that I had seen you in Las Vegas on two occasions and I described the gambling incident.

Q They asked you if you knew me? Did they ask you prior to your telling them about the gambling incident, did they ask you about the hotel stay in Honolulu?

A That's what I believe prompted them to call me.

Q And did they tell you that I paid your hotel bill or I submitted your hotel bill to my account?

A They were telling me -- they told me that they were investigating the circumstances and they wanted to know about whether or not I had two rooms, how I had paid for it, through what travel agency, why the two rooms and this general conversation I related these facts to them.

Q Did they, prior to you telling them about this gambling, did anybody from the U.S.Attorney's office tell you that I submitted your hotel bill to the account of Nassau for

payment?

A No, sir.

Q You just told them about the gambling on your own?

A The gambling I told them on my own. They appeared to know about the hotel bill in Hawaii.

Q Now, you said that you were in Las Vegas in April of 1974 on business. That's not a fact, is it?

MR. DRUCKER: I'm going to object.

THE COURT: If the testimony is not correctly summarized the witness may answer in his own words.

A My business was in Los Angeles and I stopped at Vegas.

Q To bet your $2?

A Sure.

Q And when we were at the same table in April of 1974, you said I was betting $100 bills and you were betting $2 chips?

A Yes.

Q And theere was only 3 of us at the table?

A That is right.

Q How long did you stay in Las Vegas?

A In April of 1974, one day and one night I believe.

Q Did you ask what I was doing there?

A No.

Q Do you remember when you turned in your key, Mr. Papademus, in Honolulu?

MR. DRUCKER: I object to this as repetitious.

THE COURT: No, he didn't cover this part of it.

A I am quite sure right before we left the hotel I turned in both keys for both rooms.

Q The time.

A OUr flight was -- I believe about 5 o'clock. It must have been about at check-out time, 1 or 1:30, because that was the cehck-out time for the hotel.

MR. CAHN: Thank you very much, no further questions.

THE COURT: Anything more?

MR. DRUCKER: Yes.

REDIRECT EXAMINATION

BY MR. DRUCKER:

Q Mr. Papdemus, on this previous occasion that Mr. Cahn asked youabout regarding these matters, do you recall giving the following answers to the following questions. Page 1686.

"Question: Did you play at the same table as Mr. Cahn did?

"Answer: The second time I saw him in '74, yes.

"Question: At the same table?

"Answer: Yes."

And then moving to page 1687.

"Question: You mean to tell me -- how many people played against the dealer, 5, 6?

"Answer: Which occasion, sir?

"Question: The one that you were at the same table with Mr. Cahn.

"Answer: When I was at the same table with Mr. Cahn in April of 1974 there were only 3 of us playing at the table."

Do you recall giving those answers to those questions?

A Yes, I do.

Q Mr. Papademus, I'm going to show you part of Government's Exhibit 64-A in evidence, and this is the back of your room bill, and I'll ask you to look at that notation and see if that refreshes your recollection as to the exact time that you checked out of the Surf Rider Hotel.

MR. CAHN: Objection, that was not the testimony. He did not say that he remembered checking out.

THE COURT: You asked about when he turned in the keys.

MR. DRUCKER: All right.

Q Does this refresh your recollection as to what time of day you turned in the key? First of all, I'll go back a moment. Did you turn in the key and check out at the same time?

A I turned in the keys right before. When we removed the luggage and put it in storage and waiting for our departure time, I think it was around noon or 1 o'clock.

Q It could have been earlier and again directing your attention to the back of the --

MR. CAHN: Objection.

THE COURT: Overruled.

MR. CAHN: Leading.

THE WITNESS: No.

RECROSS-EXAMINATION

BY MR. CAHN:

Q It says here March 20th, 2:05 p.m.,'71. That didn't refresh your recollection, did it?

A I knew it was a couple of hours before our flight time. I don't have any vivid recollection.

MR. CAHN: No further questions.

THE COURT: Thank you, Judge Papademus, you are excused.

D E N N I S B R O G A N, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Tell the jury the place and nature of your present employment?

A Las Vegas. I'm a 21 shift manager.

Could you try and speak up so the far members of the jury can hear you, Mr. Brogan?

A Yes.

Q For how long have you been with the Las Vegas Hilton?

A Since they opened.

Q When was that?

A July of 1969.

Q Now, just generally, what are your duties and responsibilities as shift manager?

A I am a 21 shift manager, I'm in charge of the 21 tables on the swing shift, in charge of the dealers and the floor.

Q You have tables that have different designations, like $2 tables, $5 tables?

A Yes.

Q Do you remember these questions and these

Q Is that correct?

A Yes.

Q How many different disignations are there?

A Well, we have tables at the present time from 2 to 1,000; from 5 to 1,000; from 25 to 1,000.

Q So a $2 table would be -- would that be a maximum or a minimum?

A That's a minimum.

Q How about 1972 and 1974?

A The only change would be in the maximum which would be 500.

Q That then was 2 to 500 would be required, now it would be 2 to 1,000; so is it fair to say you could have a $500 player at the same table with a $2 bettor back in 1974?

A That's correct.

Q Now, back in 1974 and 1972, was it possible for someone to bet at the 21 table with cash or was it chips?

A No, they could bet cash.

Q Did this happen?

A It happens all the time.

Q That people bet cash?

A Sure.

Q $100?

A Yes.

Q Does the casino frown upon $100 players?

THE COURT: What is the difference between blackjack and 21?

THE WITNESS: That's the same game.

MR. DRUCKER: No further questions.

MR. CAHN: No questions.

J O H N D O R C A S, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Mr. Dorcas, tell the jury the place and nature of your present employment.

A I 'm an auditor for the County of Nassau Controller's office.

Q Presently you would be under Mr. Holmstead Christ?

A Yes.

Q For how long have you been in the Nassau County Controller's office?

A 9 years.

Q Do you know the defendant William Cahn?

A Yes.

Q And when did you first meet him, if you recall?

A I first met him in December of 1974.

Q Without going into the substance of what you were told, was this something that you were assigned by Mr. Christ to do?

A Yes.

Q Tell us the purpose of this meeting as you understood it to be.

A The purpose of this meeting was that Mr. Cahn was to identify certain payments that he was received that were used for the purpose of making payments to informants.

Q The question had arisen with regard to certain expenditures of Mr. Cahn and it was pursuant to this that you went to see him?

A Right.

Q Was this in his office or yours?

A His office.

Q Now, was anyone else present by the way?

A No, sir.

Q Now, Mr. Dorcas, did Mr. Cahn give you a list of funds which he claimed to have used to pay an informant?

A By a list, you mean something in writing?

Q Did he give you something either orally or in writing?

A Orally.

Q Did you take these down either in writing or any other way?

A Yes.

Q What did you do?

A Well, part of the discussion concerned the identification of payments which I had a record of that Mr. Cahn received from the National District Attorneys Association, and the other part consisted of information relative to other payments which I had no record of.

MR. DRUCKER: Can this be marked for identification?

THE CLERK: Document marked for identification as Government's Exhibit 84.

MR. DRUCKER: I'll ask that these be marked as 84-A for identification.

THE CLERK: So marked, Government's Exhibit 84-A for identification.

DIRECT EXAMINATION

BY MR. DRUCKER: (Continued)

Q Now, with regard to 84-A, are those the notes that you made while Mr. Cahn was giving you the figures?

A Yes.

Q Are all of the figures that he gave you included

in those notes, to the best of your recollection? Did you write down everything that he said?

A Yes.

Q Did you add anything on your own?

A I don't believe so.

Q Did you take anything out of what he said or did you simply transcribe what he gave you?

A I simply transcribed what he gave me.

Q Now, with regard to the documents on your right, Government's Exhibit 84 for identification, do you recognize that and can you identify that?

A Yes, sir.

Q What is it?

A It's a list of the payments that were identified by Mr. Cahn that were used for the purpose.

Q List of outside monies or monies from outside entities that he claimed to have used to pay an informant?

A Yes.

Q Does it correspond with one possible minor exception, does it correspond to 84-A, your worksheet?

A If the amount corresponds -- you want me to compare the date?

Q Just the amount.

A Yes, the total corresponds.

Q Is there not one typographical error in a date from 80 to 84-A?

A I don't believe that's the one that had the error. You are talking about the other exhibit from the other source that had the error in the date, June 23, 1972.

Q I show you the second page of Government's Exhibit 84, are there any differences there from the entries which are in 84-A?

A Yes, there is an error -- date June 20th, 19 -- it should be June 20th, 1972, and the exhibit says June 20th, 1970.

Q Other than that which is corrected on 84 now, do the two documents agree with regard to dates and figures to the best of your recollection?

A Yes, they agree.

MR. DRUCKER: Your Honor, I'm going to offer 84 into evidence.

THE COURT: Show it to Mr. Cahn.

(Mr. Cahn looking at exhibit.)

MR. CAHN: I have no objection to this at all, but I think your Honor, this is just a part of a report, and in that regard I think the entire report should be placed in evidence.

THE COURT: Let me see what this is. I'll

consider the rest of the report if it's offered on cross-examination of the witness or at some other time.

Q Did Mr. Cahn give you any listings of money that he claimed to have paid out to the informant, this was funds that came in to him, that he claimed to have used; is that correct?

A Yes.

Q Did he give you separate listings of monies of the times that these monies were claimed to have gone out for him?

A Well, that was part -- he did not at that time present me with that list. That was incorporated in his affidavit.

Q That was an affidavit that Mr. Cahn gave to you?

A He gave I believe to Mr. Christ.

Q And this was subsequently incorporated along with Government's Exhibit 84 what has been referred to as County Controller's Report; is that right?

A Yes.

THE CLERK: Government's Exhibit 84 marked in evidence.

MR. DRUCKER: No further questions.

1579

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Dorcas, at the time we had our conversation in reference to the list marked Government's Exhibit 84 in evidence, did I not tell you that I wasn't sure whether the list was accurate and complete?

A Yes, you did. I believe your exact words were to the effect that you were speaking from informal records and it was to the best of your recollection.

Q And I believe you said when I gave you that list from which you prepared -- I was reading?

A This was oral transmission.

Q Now, you have a list of monies and listed there from the National District Attorneys Association, do you not?

A Yes.

Q Isn't it a fact, sir, that you testified there was a typographical error made?

A Yes.

Q And may I ask you whether the amounts that you wrote down or the amounts that I gave could in some instances been different?

A Yes, this is possible.

MR. CAHN: Your Honor, the U.S. Attorney

concedes that Defendant's Exhibit M for identification is an exact copy of what I delivered to the U.S. Attorney's office, listing of monies received.

Concentrating on the National District Attorneys Association, Mr. Dorcas, we started back in 1970, did we not?

A Yes, sir.

Q $280?

A Yes, sir.

Q Next one, 265.56?

A Yes, sir.

Q Next one, 181?

A Yes, sir.

Q Next one, 511?

A Yes, sir. I have a different figure. The next one is 864.

Q 864?

A The next figure on the listing --

Q Give me the date of 864?

A 2/22/71, and this might have been in conjunction with another payment of $200. It might have been part of gross payments.

Q Would you mark 864 on the side.

My next figure is 511.

A You don't care about the pennies. I have 511.46.

Q Do you have a 511?

A No, I have a 511.46 only.

Q And you don't have 511?

A No.

Q You want to mark it on the exhibit?

A You want me to mark it on the exhibit?

Q Just so we keep --

A All right.

Q 368.68.

A Yes, sir.

Q 127.90.

A Yes, sir.

Q 538.90.

A Yes, sir.

Q 847.

A Yes, sir.

Q 1,433.76.

A Nc, sir. I do not have that figure.

Q May I ask your next figure?

A 1,783.76.

Q My next figure after 1,433.76 is 350. Would that be 1,700 --

A I believe that would add up to that.
Q Next figure, 432.
A Yes, sir.
Q Next figure, 153.
A Yes, sir.
Q Next figure, 202.
A No, sir. I have $771 even.
Q My next figure is 569, would that add up to $771?
A Yes, sir, it does.
Q So we match there?
A Yes, sir.
Q Next figure, 1,154.
A Yes, sir.
Q $124.
A Yes, sir.
Q $156.
A Yes, sir.
Q 198.83?
A Yes, sir.
Q 327.46.
A Yes, sir.
Q 192.02.
A No, sir.

Q What have you got?

A I have 847.89.

Q And you don't have 192.02?

A No.

Q Would you put that aside.

A 192.02?

Q Yes, sir; 387.27.

A I don't have that figure. Is this a combination again?

Q What is your figure -- your next figure?

A Well, I stopped at the 847.89. Is that where we last messed up. I was wondering if the next figure adds up to that.

Q What is your next figure?

A I don't have 387.27.

Q After 847.29, what is your next figure?

A I have$716.

Q Would you put 387.87 on the side; and following 716; 182.73.

A Yes, sir.

Q And 729.21.

A Yes, sir.

Q Now, as I understand you have the figure of 840 something?

A 857.49.

Q Is that not --

A You did not read that to me.

Q You do not have a figure of 511 even?

A No.

Q And you do not have a figure of 192.02; is that right?

A That's right.

Q But you do have 847.29?

A Yes.

Q 327.27?

A No, I do not have that.

Q And you don't have that figure?

A No, sir.

Q Now, you have a list of the National Colleague?

A Yes, sir.

Q Read that, 375.

A Yes, sir.

Q 360.

A Yes.

Q 368.60.

A Yes, sir.

Q 299.

A Yes.

Q 251.

Q 296.
A Yes.
Q 279.
A Yes.
Q 295.
A Yes.
Q 363; 327.
A Yes, sir.
Q 421.67.
A Yes.
Q 477.17; 267.27.
A Yes.
Q 354.27.
A Yes.
Q 286.57.
A Yes.
Q 560.27.
A Yes, sir.
Q What is your next list?
A There are two payments from prosecution management committee of NDAA, that's 19 --
Q What are the figures?
A 192.02 and 527.27. There are the figures we are looking for.

Q $100?

Q Any other long list?

A There is another list, they were not specifically identified as to the source.

Q All right. We'll start with police standards; 284.

A That figure is here; yes.

Q 376.

A Yes.

Q 383.50.

A I have$383 only. This might have been another error. On the worksheet there is 383.50; on the typewritten --

Q Mistakes can be made, that's why I'm going through this with you.

MR. DRUCKER: I object to the speech.

THE COURT: Go ahead with your question.

Q The next, 386?

A Yes, sir.

Q Do you have 67.77?

A Yes, sir.

Q Do you have 478.50?

A Yes.

Q And do you have 443?

A Yes.

Q Do you have any others?

A No, I believe we identified them all.

Q Then again, may I recapitulate and say you have a figure of 847, is it?

A $847.89; yes, sir, that you did not -- I also have a figure of 874 which you didn't read.

Q 847.89, you do have?

a I do have that.

Q The figure that was dated on Washington's Birthday, 222 what?

A 222.71,$864.

Q $864, that you have, that I don't; and you don't have 511, that I have but you don't.

A That's right.

Q Other than that, the lists are similar?

A Right.

Q Now, Mr. Dorcas, do you remember the date of this conversation?

A On 12/27/74.

Q And you were conducting this pursuant to a request by Mr. Christ, the controller?

A Yes, sir.

Q And you took these figures, did you not, and then you added up figures that you got from copies of

affidavits which I showed you; isn't that correct?

A Yes, sir, that was a different day, I believe -- no, that was the same day.

Q Pardon?

A That's right; that's correct.

Q I show you Exhibit C and ask you if these are parts of the affidavits that you looked at, and I'll show you Exhibit H and also K.

A You want me to compare these to my workpapers all the way down?

Q Are these the copies of affidavits that you looked at?

THE COURT: You're talking to an accountant, he wants to be accurate.

A (Continuing) You want me to compare these to my worksheets as to dates and amounts?

Q If you want to do that.

MR. DRUCKER: If it will save time I'll stipulate that they match up to the worksheet.

MR.CAHN: O.K.

Q Now, the total in the exhibits that youhave.

A Schedule payments to you or from you?

Q Of monies received, the totals, it totals what?

A This totals $19,741.33.

Q And naturally if there were mistakes in the amounts that were given to you or mistakes in the amounts withheld from you that total would be different.

A Would change.

MR. CAHN: Thank you.

THE COURT: Any redirect?

MR. DRUCKER: No.

THE COURT: Thank you, Mr. Dorcas, you are excused. The jury go out for lunch. Don't talk about the case amongst yourselves. Don't talk at all to the people in the courtroom. Thank you.

(Whereupon, the jurors were excused for luncheon recess.)

THE COURT: What is your estimate of the time now, Mr. Drucker?

MR. DRUCKER: Maybe an hour, hour and a half.

THE COURT: Will there be any surrebuttal?

MR. CAHN: Might be. We'll try to finish this afternoon in any event.

(Whereupon, a luncheon recess was had.)

(After recess.)

(Whereupon, jurors entered the courtroom and are now seated in the jury box.)

THE COURT: All right, you may be seated.

MR. Drucker, your next witness.

MR. DRUCKER: With the consent of the defendant, I'm going to offer in evidence Government's Exhibit 57 which was identified previously by Mr. Christ as being claim forms submitted to the county in the ordinary course of business.

MR. CAHN: No objection.

THE COURT: They may be marked.

THE CLERK: Government's Exhibit 57 marked in evidence.

MR. DRUCKER: With regard to the next witness, Henry Devine, I would like to make an offer of proof.

THE COURT: All right, let Mr. Devine sit there for a moment.

(Whereupon, a side bar conference was had.)

MR. DRUCKER: I believe that this is admissible but because of the nature I assume Mr. Cahn would want to object to it. The offer of proof would be that Mr. Devine would testify that the last weekend of September 1974 he was to come into the office to assist Mr. Cahn and Mr. Spanata in working on a certain murder case. He came in that weekend and he would up working with two other assistants while Mr. Cahn, Mr. Spanata and Mr. Mackston worked all weekend behind closed doors in the office next to Mr. Cahn.

That's it.

THE COURT: This was asked about awhile ago.

MR. DRUCKER: It was within a few weeks that Mr. Cahn came public for the first time with these affidavits or for the first time revealed to anyone else the presence of these affidavits, and I would be asking the jury to draw the inference from that and the nature of the affidavits, not only the affidavits but also the Sam Houston activity sheet in particular, the nature of the information in that, the typing, sloppily typographical errors.

MR. Devine would say he doesn't know what they did in that room but I feel the Government can argue to the jury they could draw the inferences.

MR. CAHN: This is entirely prejudicial. There is absolutely no connection.

This was a time during election, Mr. Mackston was asked about this, working on election matters. We talked about working on the Poplinger case, and I will accept your Honor's ruling that the inference upon inference rule doesn't exist, but the proximity and the reference to be drawn on this type of testimony is so speculative that it far outweighs the prejudicial matter -- far outweighs the provative value.

I can't see this at all.

THE COURT: I don't know what is so terribly prejudicial about the four of you being together for the weekend unless it supports the inference.

MR. CAHN: Your Honor, the question was asked of me were there weekends when we were together -- yes, we were working on campaign, we were working on cases because Mr. Devine was in the room and saw us in there, characterized by Mr. Drucker as closeted. It's so speculative and so little provative value.

THE COURT: I think the inference may not be a compelling one but I think it's one that the Government can argue to the jury. I'll let him testify.

MR. DRUCKER: Thank you.

MR. CAHN: I'll take exception to your Honor's ruling.

(Whereupon, the side bar conference was concluded.)

MR. DRUCKER: At this time the Government calls Henry Devine as a witness.

H E N R Y P. D E V I N E, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q Tell the jury the place and nature of your present employment.

A I'm a Chief Assistant District Attorney in the County of Nassau.

Q For how long have you been so engaged as Chief Assistant?

A WEll, I think the defendant appointed me Chief Assistant in 1973, '74.

Q Prior to that, were you an Assistant District Attorney?

A Yes. I was sworn in in January of 1950.

Q And were you Chief of the Appeals Bureau for some time?

A Yes.

Q For what period of time?

A For approximately 24, 25 years, I guess.

Q And I take it you know the defendant very well?

A 1 do.

Q Mr. Devine, directing your attention back to September of 1974, do you recall a weekend in which you spent the weekend working in the office on a particular case?

A Yes, I do.

Q What weekend was that?

A The last weekend inSeptember of 1974, 28th and

the 29th.

Q And what was the case that you were to work on that day?

A I was working on -- to prepare an indictment in a conspiracy for murder.

Q That was known as the Poplinger case?

A Correct.

Q Was anyone else working with you at that time?

A I had anticipated Mr. Spanata would have been working with me. He presented the case in August and September.

Q It was his case?

A Correct.

Q Now, did you go in that weekend?

A Yes, I did.

Q And did Mr. Spanata work with you on that weekend?

A No.

Q Where was he, to the best of your knowledge?

A Mr. Spanata was working in a different room with Chief Bahr and Gladys Maston.

Q How about defendant Cahn?

A I saw the defendant coming and going over the weekend. He wasn't there continually. It was a campaign

time and he was campaigning and he would come into the office and just come and go.

Q Now, can you describe the room in which they were working that weekend?

A Conference room next to the suite of the office of the District Attorney.

Q Were they in there on Saturday of that weekend?

A Yes, sir.

Q How about Sunday?

A Yes.

Q Both days?

A Yes.

Q Are you familiar with files that the District Attorney keeps of newspaper clippings relating to organized crime matters, generally?

A Not really. That's not specifically within my jurisdiction. I would only be generally familiar.

Q Are you aware of where these files are kept?

A Yes, they were kept in the Racket Squad room and also in Mr. Cahn's office.

Q How about in the conference room that you just described?

A I'm not sure whether they were kept there or not.

Q Will you tell the jury whether there is a typewriter in that office?

A Yes.

Q Were you aware whether or not that typewriter was being used on that weekend?

A I really don't know what was going on in that room. I could tell you the people that were there but I cannot tell you what they were doing. I was not in the room and I did nothave any conversation with any of the people there.

Q Did Mr. Spanata work with you at all on the Poplinger case that weekend?

A Not really.

Q By the way, I think you testified that Chief Spar was with them on that weekend?

A Yes.

Q Do you know whether or not Chief Spar was involved in Mr. Cahn's campaign at all?

A Specifically in what way, do you mean?

Q Was he an official of the campaign?

A I think he was a very good friend of the District Attorney, but I don't know really that he had any official capacity.

Q At any time did you learn something or hear

something to the effect that Mr. Cahn had been paying an informant known to him as Sam Houston over the years 1970 to 1974, or thereabouts?

A Yes, I first learned about it two days after the election in September of 1974.

Q Early November?

A Yes.

Q How did you learn about it?

A Mr. Cahn told me about it.

Q Was anyone present when he told you about it?

A No, I don't believe there was.

Q I'm going to show you Defendant's Exhibit C, K and H in evidence, and ask you when was the first time you either saw or heard about those documents being in existence?

A This is the first time that I have seen the affidavits. I learned about them sometime maybe in October or November that they existed.

Q 1974?

A Yes.

Q Now, Mr. Devine, in the ordinary course of business, are subpoenas served on the District Attorney and the District Attorney's office from time to time?

A Yes, they are.

Q And do you recall when such subpoena being

served by the U.S.Marshals for Mr. Cahn back around November of 1974?

A Yes, I do.

Q And whether or not Mr. Cahn was in the office or away someplace at that time, to the bestof your recollection?

A To the best of my recollection, a subpoena was served the third week of November, Mr. Cahn was taking a rest following the election, and I accepted service in his benalf and turned it over tohis secretary, Gladys Matson.

Q Is this ordinary for someone else to accept service?

A It would be proper for the Chief Assistant when the District Attorney is not present.

MR. DRUCKER: No further questions.

CROSS-EXAMINATION

BY MR. CAHN:

Q How long do we know each other?

A 27 years.

Q We came into the office together?

A Right, sir.

Q Do you know my reputation for truthfulness in the community?

A Never discussed it with anybody.

Q Never had?

A No.

Q Do you know?

A I know it's been testified to here.

MR. DRUCKER: I'm going to object.

THE COURT: You could ask him a different way but don't ask him for a reputation if he didn't discuss it.

Q You have heard -- have you heard anything bad about me prior to this case?

A No, sir.

Q If you expected to work with Mr. Spanata and if I had other work for him, would he not perform the other work for the District Attorney?

A Yes, sir.

Q Mr. Devine, do you have any idea at all what was going on in the room?

A No, sir.

Q None whatsoever?

A No, sir.

Q And you told Mr. Drucker that I was in and out?

A Correct.

Q As a matter of fact, didn't you come in to discuss some of the developments that took place with

Poplinger?

A I'm sure we discussed Poplinger.

Q Wasn't Chief Spar there?

A Yes, he was.

Q For the purposes of helping in Poplinger?

A I really don't know what Chief Spar was doing, Mr. Cahn. I know he worked in a different room with Gladys and Joe. I don't know what he was doing. We didn't have any conversation about what they were doing.

Q You didn't?

A I did not, correct, sir.

Q Is it unusual in the District Attorney's office for the Chief Assistant not to know when investigations may be going on?

A No, I think that's quite customary in our office. The way we organize our office I busied myself with the operations part of the office, by that I mean our complaint bureau, our District Court trial bureau, the County Court trial bureau and so forth, whereas the Investigation Units were really your personal responsibility.

Q You handled the administration work?

A I handled the operation part of the job.

Q And that was at my direction, sir?

A Yes.

Q And I determine to busy myself with the Investigation Unit?

A Yes, your whole career.

Q At about the time that you became Chief of the Appeals Bureau, a short time thereafter, did I not become Chief of the Rackets Bureau?

A Yes, sir.

Q And the Homicide Bureau?

A Yes, sir.

Q And was I not involved with the investigations and prosecutions of all major crimes that took place in Nassau County from that time on?

A You were.

Q And as District Attorney, Mr. Devine, were there not occasions when assistants got sick and I jumped in tod prosecute a case for them?

MR. DRUCKER: I don't what relevance this has. I'll object.

THE COURT: Overruled.

A I can recall one particular case the murder of a Nassau County police officer where the trial assistant became ill and you did take over and finish that trial.

Q And after I left you remained on as Chief Assistant District Attorney?

A That's correct, sir.

MR. CAHN: Thank you.

THE COURT: Any redirect?

MR. DRUCKER: No, your Honor.

THE COURT: You are excused.

MR. DRUCKER: The Government calls Mr. John Bjorklund.

J O H N B J O R K L U N D, called as aiwtness, having been first duly sworn by the Clerk of the Court, was examined andtestified as follows:

DIRECT EXAMINATION

BY MR. DRUCKER:

Q State your name?

A John Bjorklund, Junior.

Q Mr. Bjorklund, tell the jury your employment.

A Chief Investigator for Nassau County District Office.

Q How long have you been employed ?

A 7 years.

Q Before that?

A I was employed by the FBI approximately 22 years, retiring agent in charge of the Nassau County office.

Q Would you describe your duties and responsibilities in your present capacity?

A Well, up to January, '75, I was concerned primarily with the investigation of organized crime figures in Nassau County, since that time I've been involved in the area of investigating official corruption.

Q From 1970 to the end of 1974, what were your duties and responsibilities with regard to the Rackets Bureau or organized crime investigation?

A I was concerned with the investigation of organized crime figures in Nassau County and their activities.

Q And what was your title?

A Chief Investigator.

Q By the way, in the course of your experience, did you ever hear of a book entitled, the Basic Elements of Intelligence?

A No, sir.

Q Showing you now Government's Exhibit Q, do you recognize that?

A No, I have nefer seen it.

Q Have you ever heard of it?

A No, I can't say that I have.

Q Itake it it's not a book you ever worked with?

A No.

Q I amplacing in front of you Defendant's Exhibit

L in evidence and I'll ask you if you had o-casion in the last week or two to gothrough that document?

A Yes, sir.

Q With regard to the items therein, have you had occasion to, No. 1, search your recollection with regard to many of the items; and, No. 2, to examine the files of the Nassau District Attorney's office?

A I have.

Q Turning to page 2 of that document, May 11, 1970, "Met with Sam Houston in Washington, D.C.; on May 1st stated that the killing of Caspar Magandino was only the beginning. If we could get Colombo and Paul Schiacca to opan up we could learn a lot."

Did you back at that time -- if you had received this information would you have considered this to be worthwhile information or novel information of any sort?

MR CAHN: Objection.

THE COURT: Overruled.

MR. CAHN: Your Honor, may we approach the bench?

THE COURT: All right.

(Whereupon, a side bar conference was had.)

MR. CAHN: I would like to quote from Judge Dooling where it comes to the value of this information, where Judge Dooling rejected such testimony.

THE COURT: Let me see.

MR. DRUCKER: I think the issue before Judge Dooling was with regard to the dollars, cents, dollar amount of value. I'm talking about whether the information was known to the witness.

THE COURT: What page are you referring to?

MR. CAHN: No. 1, 1648. Will you characterize the information in Defendant's Exhibit G in evidence as general or specific -- objection sustained -- then is there anything -- any such thing -- again the objection was sustained. Each time where there is to be a characterization of this type of testimony the objection was sustained. It's not the value of the information.

MR. DRUCKER: I am not going to ask him value in dollars and cents which I had endeavored to do with Mr. Polia on the last trial. I recognize this witness could not put a dollar and cents value on it. I'll attempt to show that this information was already in the files of the District Attorney or was already public knowledge. I'm not going to ask him to fix any dollar, cents, onit, which may then become the subject of Judge Dooling's ruling.

MR. CAHN: It's already cumulative.

THE COURT: You put in 25 character witnesses, I allowed you to be cumulative.

MR. CAHN: I don't think --

THE COURT: It's not entirely comparable.

MR. CAHN: I don't think so.

The question here -- there is the statement the defendant made on the witness stand, the same information was to be used as corroboration of other information already received or to have it corroborated. Now, this witness testified there is other testimony or other such information in the files of the District Attorney's office, and it has no provative value and to start characterizing -- again, I think Judge Dooling's ruling is absolutely correct.

THE COURT: It seems to me that Mr. Drucker asked a different question.

MR. DRUCKER: I have, your Honor.

I was trying to get Mr. Talia, he was prepared to testify to dollar amounts he would have paid an informant and Judge Dooling without any real argument excluded that.

THE COURT: You are asking this man whether it was novel or whether it was old hat, so to speak.

MR. CAHN: I'm going to very muchobject to the characterization of Mr. Drucker --

MR. DRUCKER: I'm just stating --

MR. CAHN: But again if you are talking about characterization here, your Honor, here is a specific question not in reference to how much it was worth. "Will you characterize the information in Defendant's Exhibit G in evidence as general or specific -- objection -- objection sustained --" And then later on --

MR. DRUCKER: I'm not asking that either.

THE COURT: He described what was singular.

MR. CAHN: Here on page 1654 --

MR. DRUCKER: What happened --

THE COURT: Wait a minute, Mr. Drucker.

What is the specific question you want to ask?

MR. DRUCKER: Whether or not this information was novel or known to him at the time.

THE COURT: That I think is proper.

MR. CAHN: He's characterizing the words.

THE COURT: He's asking the witness to characterize -- I'll overrule the objection to that.

Mr. Drucker, rephrase your question.

(Whereupon, the side bar conference was concluded.)

DIRECT EXAMINATION

BY MR. DRUCKER: (Continued)

Q On May 11, 1970, did you know who Colombo was?

A Yes.

Q Who was he?

A He was the head of an organized crime family.

Q Joseph Colombo?

A Yes.

Q And Schiatta (phonetic), who would that be?

A He was the head of another organized crime family.

Q Would this have come as a surprise toyou on May 11, 1970, if an informant told you, "If you could get Colombo and Schiatta to open up it would mean a lot."

A Certainly not.

Q "He told us he knows we have a grand jury looking into the disappearance of Maria dn Frank Adamo (phonetic)."

A That's right.

Q Was this a well-kept secret of the Nassau County District Attorney's office?

A No.

Q You had an investigation going into the disappearcne of Frank Adamo?

A Yes.

Q Witnesses were subpoenaed?

A Yes.

Q Numerous witnesses?

A Yes.

Q In fact, showing you Government's Exhibit 81 in evidence, it had even been the subjectof a newspaper article. There was a grand jury looking into the disappearnce of Marie and Frank Adamo --

By the way, your Honor, this was not marked in evidence.

THE CLERK: Government's Exhibit 81 so marked.

Q And continuing further from the same entry, he says Marie is dead and he would try to find out about Adamo later although he's also certain that Adamo is dead. Would this have been new information in May back in 1970?

A I believe it was mentioned in that article.

Q And it was in the newspapers; is that right?

A Yes.

Q Had you received intelligence information to that effect earlier?

A Yes.

Q Now, going on to the notation on June 29, 1970, "Met with Sam Houston on June 23rd, he informed me that the

1610

robbery involved the Long Island Jewelry Exchange and that Colombo was called in to arbitrate when a dispute arose over the proceeds of that robbery, the value of the jewels was between half million and a million dollars; gave Sl $500."

Do you recognize that information at all?

A Yes.

Q And had you personally heard that prior to June 29, of 1970?

A Yes.

Q When and from whom had you heard that?

A About the jewel robbery itself I was aware of that going back to 1968 from an informant of mine who subsequently became a Government witness in a number of cases, and as a result wasn't available to the local authorities to prosecute the jewel robbery. I ran across this informant in the FBI office some time in either May or early June of 1970, and at that time I asked him if he would testify in the Long Island case and he said that he would if he could get the approval of the Task Force or the STrike Force in the Eastern District for whom he was at that time testifying, at least being a witness in some way.

This was taken up with the Strike Force and they did agree to make him available for an interview, and they mentioned at that time that Joe Colombo was also involved in a sort of a periphery action in connection with the

robbery; and on June 25th R. Magin (phonetic) the informant in this case who later testified --

Q M-a-g-i-n?

A Gave me a detailed statement concerning the robbery and the participation of Colombo.

Q So that some time in May or early June of 1970, you had received that information from Mr. Magin; is that right?

A No, I received that from the FBI and subsequently interviewed Magin on June 25th.

Q When you received it from the FBI did you pass it on to anybody else in the Nassau County --

A This would have been mentioned to Joe Spanata, something to look forward to in the way of a good prosecution.

Q Now, the notation May 17, the entry -- under May 17, 1971, "Met with Joe, Charlie Spar and SH on May 11, asked Sam as to whether or not he knew Ramos, he said he knew him to be a small time hit man with connections in Texas but doubted very mucy if he killed Sally Burns, he would find out more defintely later."

With regard to that information regarding Mr. Ramos, was that new information toyou at that time?

A No.

Q Had you personally heard this prior?

A The man's name is Raimo, R-a-i-m-o, and I had heard this information in mid-April of 1971 at a conference of the law enforcement intelligence unit in Houston, Texas.

Q Who else had this same information in the office, to your knowledge?

A John Lang, a detective, and Mr. Spanata; at least those two.

Q John Lang, that would be Sergeant Lang?

A Yes. I might add, I think that subsequently he and Mr. Spanata, at least went down to talke to Mr. Raimo who was in jail in Atlanta I believe.

Q Would that be in May of 1971?

A I just don't know when that was.

Q Now, moving on to June 30, 1971, entry, which reads: "Met with Sam Houston, Joe and Charlie, in Reno, asked Sam about the Clarence Carter policy ring, he informed us that he heard of Carter and was a mob connection between Carter and the mob but he didn't know Carter too well."

Back on June 30, 1971, and prior to that, had you heard about Clarence Carter?

A Yes, sir.

Q Had you heard anything about him being involved in a policy ring?

A Yes. He was arrested, according to the office records, on June 8, 1971, he was a well-known gambling figure in Nassau County with reported mob connections going back over many years.

Q Whether or not you had heard anything to the effect that there was a mob connection with Carter.

s It was so reported.

Q Is that well-known in law enforcement circles, to your knowledge?

A I would believe so.

MR. CAHN: Objection to what he believes.

Does he know.

THE COURT: Tell us your best recollection.

(Continued next page.)

Q Back in July of 1971, were you aware of any shylocking operation involving a husband and wife where a couple's first name were Mary and Joseph?

A Yes.

Q What was the last name?

A Corovano.

Q Were you aware of any such a shylocking operation with a Marina and a Joseph Gambino?

A I was not aware of any.

Q Whether or not around that time there was any arrest made of Mary and Joseph Corovano for shylocking?

A On July 31st, they were arrested and seized at that time with considerable shylock records of Mr. Corovano.

Q Had they been under investigation prior to July 17, 1971, to your knowledge?

A I don't recall.

Q Prior to August 5 of 1971, referring to the next entry, had you heard that the Corovano operation was connected in any way with the Gambino operation?

A Yes.

Q So that if somebody came to you on August 5 and said the Corovano shylocking ring is a Gambino operation, is part of the Gambino operation, would that have been novel to you?

A No.

Q Continuing down, quote, "Sam told us to work over Mooney Cutrone. He told us that Cutrone was a Gallo man until Gallo went to jail, and when Gallo got out he rejoined Gallo and gave Sam Houston a thousand dollars."

Tell the jury whether or not you knew or had heard prior to that date that Mooney Cutrone used to be with the Gallos and then had gone back to the Gallos?

A This was known in intelligence circles, and I believe there may have been a newspaper article on it

Q Going on to September 30, 1971, "Sam informed us that there is now a big push by the mob into the pornographic field, L. A. is their base, operating throughout the country. He heard, but we'll have to check further, that there is a bigshot in Nassau."

Is that information new or is it novel or had you heard it back in September 1971?

A I would say that this was known throughout the intelligence community.

Q And whether or not a good part of that information was also public in the actual sense of the public?

A There had been an expensive investigation by the State Investigative Committee in 1970, which may have run into '71, into all of the aspects of pornography, and its organized crime ramifications.

Q And had this been reported in the newspapers, this investigation of the SIC?

A I would say so.

Q In May 15, 1972, "he informed us that Martin Hobas, who was somehow tied in with Sonny Francici, was one of the big porno operators in Nassau and there was some kind of trouble brewing, gave S. H. $750."

Going back to September 1972, had you heard of Martin Hobas?

A Yes.

Q Did you hear anything of his being connected with Sonny Francici?

A That was all in that State Investigative Committee report.

Q And was known in intelligence circles?

A Yes.

Q Was also in the newspapers?

A I believe so.

MR. CAHN: Object to what he believes.

THE COURT: Do you recall or don't you?

THE WITNESS: I don't recall independently.

THE COURT: Well, the jury will have to disregard the statement unless it's confirmed.

MR. DRUCKER: May this marked for identification?

THE COURT: Yes.

THE CLERK: Newspaper clipping marked Government's Exhibit 85, for identification.

Q Showing you now Government's Exhibit 85 for identification, I'll ask you to read it to yourself, if you will, and see if that refreshes your recollection as to whether or not the alleged connection between Hobas and Francici was reported in the newspapers prior to June of 1972 -- May 8, 1972?

A This article reports --

Q Does that refresh your recollection?

A Yes.

Q In fact, it was in the papers back in 1970, was it not?

A October 22nd.

Q September 4th, 1972. "Sam called us but stated he was unsuccessful getting any more information for us, told us there is a Dominic Degoria involved in bookmaking in Nassau County."

A Yes.

Q Did you hear of Degoria?

A He and his son was very active in bookmaking operations in Nassau County.

Q September 13, 1973. "Advised us Thomas Felinne

is dealing in narcotics in Nassau County and Long Beach."

As far as Tom Felinne dealing in narcotics in Nassau County, had your investigation disclosed anything prior to that date?

A In early May, I explained -- in early September there was a joint informant of our office and the Federal Narcotics Bureau who agreed to cooperate and in a deal was selling , led a surveilling team to a house in Long Beach. At that time, they could not identify who the person in Long Beach was, but in October, as a result of an inquiry from the Joint Narcotics Strike Force in New York City, they made inquiry about a Thomas Felinne and gave the same address in Long Beach that this man had been surveilled and at that time we became aware that Felinne was the individual that made the original buy or sale and he was thereafter arrested some time subsequent thereto. I don't know the date.

Q What about with regard to the second piece of information. "There is a Long Beach policy operation operated by William Morris?"

A There was a local policy runner named Willie Morris who was arrested the first part of 1973.

Q Arrested by who?

A Nassau County, I think it was the vice squad.

Q And finally, going back to notation here on

August 25, 1970, which states, amongst other things, referring to Columbo, "He's going to spread the rumor that I" (referring to Mr. Cahn) "many anti-Italians through the Anti-defamation League and try to get me." Prior to that time, was there any picketing of the Nassau County District Office by the Italian League?

A Very much so.

Q Do you remember any of the signs that any of the pickets carried?

A They were quite deragatory of Mr. Cahn and Mr. Spanata. They're bringing in certain members with Italian names, bringing them into the grand jury.

Q And signs saying -- it's not offered for the truth or falsity of any statement -- do you recall any sign that said "This is anti-Italian?"

A There were such signs.

MR. DRUCKER: May this be marked for identification?

THE CLERK: Document marked as Government's Exhibit 86, for identification.

Q Directing your attention to Government's Exhibit 86 for identification, in particular the part that was circled, circled in red, that had been reported in the newspapers prior to August 16, 1970?

A Yes.

MR. DRUCKER: Thank you, Mr. Bjorklund.

THE COURT: You may cross-examine, Mr. Cahn.

MR. DRUCKER: One further question.

DIRECT EXAMINATION

BY MR. DRUCKER (CONTINUING):

Q Were you aware of an informant named Sam Houston at any time prior to the middle of 1974 or thereabouts, whenever this matter came into the public eye?

A No, sir.

Q Had Mr. Cahn or Mr. Spanata, Chief Spahr or anyone tell you that Mr. Cahn had a very, very sensitive or secret informant?

A No, sir.

Q Had any of the information that's contained in Defendant's Exhibit L in evidence, which you have just been looking through, had any of that been a party to it by Mr. Cahn or Mr. Spanata or Chief Spahr?

A No, sir.

MR. DRUCKER: Nothing further.

CROSS-EXAMINATION

BY MR. CAHN:

Q Where was the Rackets Bureau files kept?

A They were kept in the office of the secretaries

for the Racket Bureau.

Q In whose charge?

A Julie Trimmer.

Q And who was in charge of that Rackets Bureau file?

A Do you mean the assistant?

Q Yes.

A Mrs. Spanata.

Q And the Rackets Bureau sheet?

A John Lange.

Q How long did you work for me?

A Five years.

Q Isn't it a fact that you and I very little conversation in reference to organized crime in that five years?

A That's true.

Q Very little?

A That's true.

Q And isn't it true that my contact in so far as investigations and organized crime is concerned was through Mrs. Spanata and Detective Sargeant Lange?

A That's true.

Q As a matter of fact, I wouldn't know who your informants were or what they told you?

A I presume so.

Q Now, as a member of the FBI -- you left the FBI to come to my office, did you not?

A That is correct.

Q And before you came to my office, you were the Chief Resident Agent of the FBI in the Long Island area?

A Yes, sir.

Q And can I ask you, did you know my reputation for truthfulness in the community?

A Yes, sir.

Q And what was it?

A Excellent.

Q As a matter of fact, I asked you to come to work for me; isn't that true?

A Yes, sir.

Q Now, as a member of the FBI and as a member of the District Attorney's staff -- by the way, you conducted other investigations that were not involved with organized crime; isn't that true?

A A few.

Q And during your stay with the FBI and with the District Attorney's office, you were familiar with intelligence procedures?

A Yes, sir.

Q And the use of informants?

A Yes, sir.

Q And the payment of informants?

A Yes, sir.

Q Did there come a time or does there come a time when an agent or an investigator stops seeking information?

A No.

Q Even though it's repetitious, even though it confirms something that he already knows, it's important to him, isn't it?

A You're always ready to listen.

Q And when one deals with an informant, does one get a hit every time he comes up to bat?

A No, sir.

Q You testified that the Long Island Jewelry Exchange case -- and you told the Court and jury that your informant in that case was Magin?

A Right.

Q That you brought to my attention?

A Yes.

Q As a matter of fact, you asked me for payments of monies?

A Yes.

Q And I approved those payments?

A Yes.

Q And I don't mean this in any derogatory sense,

there was no way that I knew whether you gave to Magin or not?

A Yes, there was.

Q How?

A I got a receipt.

Q Did I know Magin's signature?

A They were bank statements given directly to him.

Q You made sure that the bank payment to Magin was through a bank statement?

A Yes.

Q No way would I know if Magin gave you the money back? You told me you paid Magin.

A Of course.

Q Now, did you know that we had other informants in reference to that Long Island Jewelry Exchange?

A Yes.

Q Who?

A Ronnie Esposito.

Q Did you know that?

A He came in and told us.

Q Do you remember testifying before?

A Yes.

Q Do you remember these questions and these answers.

Page 16, Mr. Drucker.

"Question: Mr. Bjorklund, have you had occasion to review a copy of Defendant's Exhibit G in evidence" -- can we concede that's Exhibit L, Mr. Drucker?

MR. DRUCKER: Yes.

"Question: I will show you the document.

"Answer: I believe I briefly read it.

"Question: For about ten or fifteen minutes before coming on the stand?

"Answer: Yes.

"Question: And if you are able to, can you characterize some or all of the information that is contained in that document as to whether or not it was widely known about law enforcement officials at the time reports were to have been given?

"Answer: I do not think I could specify how widely it was known. The matters to a general nature were certainly known, the manner of the sick nature I have no way of knowing."

Is that right?

A At that time.

Q "Question: Were there matters that came from informants that you knew or you recognized the information?

"Answer: I recognized the information as coming into the office, sources. I do not at this time know which sources they came from.

"Question: Was Magin one of the sources?

"Answer: Some of the information could have come from Alan Magin.

"Question: And Stewart Vort?

"Answer: No, I do not think so."

Do you remember that?

A None of that information came from Stewart Vort.

Q "Question: Ronnie Esposito?

"Answer: I have no way of knowing."

A May I explain that? At that time, when we originally got the information on the jewel robbery, Ronnie Esposito was not an informant, he didn't come into the picture for about a year or a year-and-a-half later when he came forward and when faced with questioning he then forwarded me the information.

Q A year or a year-and-a-half later when we knew the information, when we knew the information as to the Long Island Jewelry Exchange Ronnie came in and gave us information which corroborated it and further information; isn't that true?

A Yes.

Q So if you were asked, Mr. Bjorklund, when Ronnie Esposito gave you this information, would you have been surprised -- your answer would naturally be "No"?

A That's right.

Q But it was valuable information, was it not?

A Yes.

Q And if the information came from another informant whom you didn't know, that information would be equally as valuable, would it not?

A Yes.

Q Esposito was Lange's informant?

A I understand he was.

Q And Lange was your informant?

A That's correct.

Q Now, let's talk about that Long Island Jewelry Exchange case for a minute.

Did you know that Mr. Spanata, Detective Sargeant Lange, and Chief Spahr and I went to London in reference to the Long Island Jewelry Exchange case?

A Yes.

Q Was that widely known?

A I would say no.

Q That was rather confidential, wasn't it?

Q I read from November 13 of 1970. "Met with Joe

and S. H. In Las Vegas, he informed us that the Breakville Manor in Lake Success is being taken over by the narcotics mob. He informed us that Columbo knows. I went to England on the Long Island Jewelry Exchange case, he doesn't know how Columbo found out."

Wouldn't that indicate a leak in our office, to you, Mr. Bjorklund?

A If that were a fact.

Q That would be rather important information?

A Could be.

Q Could be. If you had information when you were Chief Resident of the FBI on Long Island that there was a leak in your office --

A That aspect, yes, yes. I thought you were talking about the trip.

Q That would be vital?

A Yes, of course.

Q Dealing with informants, Mr. Bjorklund, you know, there are those who will never testify; isn't that correct?

A Yes.

Q They are used for the purpose of corroborating other information that you get from other informants; isn't that correct?

A That's true.

Q And isn't it true, especially today, that newspaper men and women have informants?

A Yes.

Q And they print that information?

A Yes.

Q But that information doesn't necessarily have any basis in fact, does it?

A You hope that it does.

Q You hope, but if you could get it corroborated by informants of your own, wouldn't that be important?

A Of course.

Q Now, do you know an informant named Mike Fiore?

A Yes.

Q At one time wasn't he an informant for the District Attorney's Office in Nassau County?

A He was.

Q Isn't it a fact, Mr. Bjorklund, we turned him over to the Strike Force, Mr. Dillon and Mr. Drucker--

MR. DRUCKER: I think this is the subject of a previous ruling.

THE COURT: We'll see. There was lots of testimony about the Fiore's last name.

MR. DRUCKER: This time the Government didn't

Italy, and I object to this business about turning them over to Mr. Dillon and Mr. Drucker. Mr. Cahn knows that the Court excluded such testimony as this with Mr. Cahn trying to connect me and Mr. Dillon up, but at any rate I would ask for an offer of proof as to where he's going on this area, and I would ask him what the relevance is, if I may, your Honor.

(Whereupon, sidebar conference was held.)

THE COURT: What was it about before?

MR. CAHN: My offer of proof, your Honor, Fiore demanded from us -- in lieu of the subpoena, I have an offer of a concession from Mr. Drucker -- correct me if I am wrong -- but my offer is this, we had to turn over Mike Fiore because he wanted fifty thousand dollars, we couldn't afford it, and the Federal Government paid it. I think this whole veneer of doubt that is being woven, I think we have every right to show this.

THE COURT: Just to show the amount of money involved?

MR. CAHN: And the fact that informants are paid, and in fact later on we were asked to cooperate with the office with reference to Mike Fiore.

MR. DRUCKER: Judge Dooling excluded this

25 Q September 13, 1973. "Advised us Thomas Felinne

repeatedly at the last trial. Mr. Cahn slid it in and the answer came out after my objection, witness answered the question and I withdrew my objection. This time I haven't asked about it so there is no claim that the Government opened the door. I didn't mention Italy each time I asked about trips to Europe, and I excuded mention of Mike Fiore.

THE COURT: You made the opening a can of worms.

MR. CAHN: If it's a can of worms, let Mr. Drucker go fishing.

MR. DRUCKER: I'll object.

THE COURT: If it was nineteen thousand dollars paid to Mr. Houston, the fact the Government pays a substantial amount can be brought out.

MR. DRUCKER: I'll stipulate that the Government paid Mr. Fiore forty, fifty thousand dollars.

MR. CAHN: Let me ask the question.

MR. DRUCKER: Paid forty-six thousand dollars and Secret Service paid one thousand.

MR. DRUCKER: The Government will stipulate that Mr. Michael Fiore was paid in or about 1972 and 1973 by officials of the then Bureau of Narcotics and Dangerous Drugs about forty-six thousand dollars and that Mr. Fiore was paid one thousand dollars by officials of

the United States Secret Service.

THE COURT: All right. You accept that as a stipulation.

(Whereupon, sidebar conference was concluded.)

CROSS-EXAMINATION

BY MR. CAHN (CONTINUING):

Q Mr. Bjorklund, I told you that we couldn't afford to pay that kind of money?

A Yes.

Q Now, you were asked this question on direct examination, May 17, 1971. "You met with Joe, Charlie Spahr and S.H. in Atlanta on May 11, asked Sam as to whether or not he knew Ramos, you say that Ramos. He said he knew him to be a small-time hit man with connections down in Texas, but doubts whether he killed Sally Burns and said he would find out later."

You said you heard about that?

A Yes.

Q What did you hear?

A While we were in the LEIU conference, I believe it was in Houston, there were a couple of detectives from the Atlanta Police Department that related the full story that Ramos had given in regard to the alleged murder by either he or his accomplices of Sally Granelli, Sally Burns.

Q The information we had, Ramo killed Sally Burns,

that was the information?

A That was my impression.

Q That's entirely different from the statement that he said he knew him to be a small-time hit man but doubted very much if he killed Sally Burns, that's totally different.

A That's his version.

MR. CAHN: I would like to make an offer of proof.

(Whereupon, sidebar conference was held.)

MR. CAHN: Your Honor, there had been a great deal of testimony in reference to monies paid witnesses, meal money for witnesses, and I'm going to ask -- it is my purpose of asking Mr. Bjorklund whether or not he kept in contact with Mr. Dillon and Mr. Drucker when he went to see him, whether he took them to lunch, whether he put any claim to the county and he named under the claim of witnesses.

THE COURT: What is the relevance?

MR. CAHN: My statement that I used witnesses in the office of the District Attorney, used witnesses in the generic term, never witnesses in the trial.

THE COURT: You don't have to bring in names. Ask him had he taken people to lunch, if he put in vouchers without giving names, that you can do.

MR. DRUCKER: No objection to that.

MR. CAHN: Okay.

(Whereupon, sidebar conference was concluded.)

CROSS-EXAMINATION

BY MR. CAHN (CONTINUING):

Q Mr. Bjorklund, there were occasions, were there not, when on behalf of the Nassau County District Attorney's office, you went to New York City?

A Yes.

Q And there were occasions when you took law enforcement officers out to lunch?

A That's true.

Q And you put a claim in to the county for that?

A Yes.

Q And isn't it true that you put the claim in under the caption, "Witnesses?"

A Yes.

Q That was the general procedure in the office, use the generic term; isn't that correct?

A That's correct.

MR. CAHN: Thank you very much.

THE COURT: Any redirect?

MR. DRUCKER: Yes, sir.

REDIRECT EXAMINATION

BY MR. DRUCKER:

Q Of course, when you do this, it would be only after you had eaten lunch with law enforcement officials and on law enforcement business?

A And they were potential witnesses?

Q Did there come a time when you stopped talking and you testified you pretty much always are willing to listen?

A Yes.

Q Did there come a time when you stopped paying informants for their information?

MR. CAHN: Objection.

A Yes.

THE COURT: Overruled.

A (Continuing.) Yes.

Q When does that time come?

A May I explain my policy and the Bureau policy?

MR. CAHN: That's exactly my objection. I don't think this trial is concerned about FBI policy and his policy.

THE COURT: Policy in Nassau County.

MR. CAHN: If he could testify about policy in the District Attorney's office.

THE WITNESS: I don't believe I could testify as to the policy in the District Attorney's office.

My personal --

MR. CAHN: Objection.

THE COURT: If he's a chief investigator, I'll let him testify about his policy.

THE WITNESS: -- was to pay on a C.O.D. basis.

MR. CAHN: Your Honor, again, I think this is exactly what we discussed at the sidebar.

THE COURT: No, this is different.

Go ahead, please.

THE WITNESS: In other words, if the information was, in my opinion, worthwhile and could result in some type of prosecution, then I would lay out some money.

BY MR. DRUCKER:

Q Would you take into account whether or not seizures of contraband were made as a result of the informant's story?

MR. CAHN: Again, now Mr. Drucker is leading and is going far afield.

THE COURT: I think that's not involved here.

Q Mr. Fiore, who you just testified about, Mr. Fiore testified in open court in a number of cases, did he not, criminal cases?

A Yes.

Q As a result of Mr. Fiore's and others testimony,

convictions were obtained?

A Yes.

Q In the Federal Court here?

A Yes.

Q And as a result of Mr. Fiore's information and undercover activities, seizures of heroin were made, were they not?

A I've heard that.

MR. CAHN: Objection to what he heard.

THE COURT: No. I think I'll permit it. This is on a collateral matter, and I don't think the hearsay implications are that serious.

(Continued next page)

Q Now, prior to the last time that you testified relating to these matters, Mr. Cahn read some of your questions and answers, I think one of them was this, you had just read Defendant's Exhibit G in evidence fifteen minutes before testifying; is that right?

A Yes.

Q Had you done any research, so to speak, prior to that, or had at any time to look up any of the information in your file?

A I had not seen it.

Q Or searched your recollection?

A No.

Q With regard to what is Defendant's Exhibit L in evidence, for the last several weeks have you done a good bit of research?

A Yes.

Q And searched your recollection?

A Yes.

Q And finally, Mr. Bjorklund, would you continue to pay an informant for very long who, number one, didn't testify in Court; number two, whose information didn't result in any seizures; and number 3, the bulk of whose information was in Newsday months before he gave it to you?

MR. CAHN: Objection.

THE COURT: That's an argumentative question. I'll sustain it.

MR. DRUCKER: Government rests.

THE COURT: I'll ask the jury to go back to the jury room in a few minutes. You are excused. Don't talk about the case yet.

(Whereupon, a recess was held.)

(Afterwards.)

MR. DRUCKER: I understand that Mr. Cahn may have Ralph Salierno testify on rebuttal, if that's correct I would like to ask for an offer of proof as to what it is.

MR. CAHN: As an expert in the field or organized crime, and to rebutt the testimony of the newspaper articles.

THE COURT: Who is Mr. Salierno?

MR. CAHN: I'm sure he's not too happy you asked that. He's probably one of the leading authorities in organized crime in the United States.

THE COURT: On the prosecution's side?

MR. DRUCKER: I would ask for an offer of proof. I made an offer with regard to Mr. Devine, I gave some specifics. I would like to ask Mr. Cahn if he'll make an offer.

THE COURT: He's going to try and show that the information was worth some money and use of informants and how they are used and so forth.

(Whereupon, jurors re-entered the courtroom and were seated in the jury box.)

THE COURT: Each side has an opportunity to respond to what the other side has done until we reach the point of no return. We are now on what is called the rebuttal and, Mr. Cahn, you may proceed.

MR. CAHN: Thank you very much.

Mr. Ralph Salerno.

R A L P H S. S A L E R N O, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAHN:

Q Mr. Salerno, will you tell the Court and jury your background, please?

A Yes, I served twenty years with the New York City POlice Department beginning in 1946, and I retired in 1967. My entire period with the New York City Police Department was in the area of organized crime investigations and primarily as a member of their intelligence unit. I was while with the police department frequently assigned to cooperate with other authorities. I testified with and for the state

commission of investigation in a number of their organized crime hearings; I was assigned to the Senate permanent sub-committee on investigations, chaired by Senator Tom McCellan in the presentation of Joseph Vallachi. I was while with the police department the only police officer to work as a consultant with the organized crime force, with the President's Task Force. Since I retired from the New York City Police Department, I have worked as a consultant and trainer of law enforcement people throughout the United States and Canada; I worked for the United States Department of Justice; I worked for the National Council on Crime and Delinquency; I have been a consultant to the President's Commission on Violence; the President's Commission of Campus Unrest; the National Advisory Commission on Criminal Justice Standards and Goals. I was the Chief Investigator of the District Attorney's office in Queens County for a period of eighteen months, January 1, 1974 to June 30, 1975; I'm currently self-employed in law enforcement and primarily in the area of organized crime and police intelligence work.

Q Have you authored any books or articles?

A I have written a number of articles that appeared in professional journals, some in regular communication media; Crime Confederation published by Doubleday in 1969; I'm currently completing a book for Doubleday & Co., all of these

materials in the area of organized crime.

Q I show you Defendant's Exhibit Q in evidence and ask you if you recognize that?

A Yes, I do; that is a document which was commissioned and paid for by the United States Department of Justice as an aid to people involved in intelligence work, law enforcement intelligence work. It's widely disseminated and widely used throughout the United States and Canada by people involved in every level of Government. The two authors are people I'm familiar with and have quite an extensive background in the field of intelligence: Dr. Gottfried, one of the authors, did interview me for input for this book; Dr. Harris is a man that I have worked with professionally on several training programs and once in an evaluation of the intelligence unit of the New York City Police Department. It is to be found in many required recommended reading lists for people engaged in law enforcement intelligence work, particularly if it refers to organized crime.

Q Would you be surprised if one in intelligence work, if one didn't know about that particular mannual?

A I would be very much surprised.

Q Now, in so far as work in organized crime is concerned, could you tell the Court and jury the value of informants?

A Well, informants are widely employed in law enforcement generally. I would say that in the field of organized crime there is an absolute necessity and a must. This has always been recognized in the field of law enforcement. Any attempt to recognize organized crime without the development of an informant program, without every person so engaged being aware of the necessity, the performance of informants would be less than a successful undertaking.

Q Are there different kinds of informants?

A Yes; number one, informants fall into many, many categories. Their motivation will be different. In general terms, I think we could separate them into three areas; an informant can be motivated by reward, revenge or fear, or some combination thereof. Some informants will have limited practical use in a case, that may be the extent of the knowledge that they can make available to you; other informants are employed generally in intelligence gathering, they may go for some long period of time without giving you specific information about one case, but their information will be varied. It will be widely used by the law enforcement people.

Number one, the person who is handling the informant also wants to try to be aware what the motivation may be, state of motivation may not be the true one; while he is necessary and useful, he may not be a pleasant person, he may not be

anyone that you would like personally.

THE COURT: I think you are doing more than answering the question. I think you might focus the testimony a little more by questions.

Q Now, is it unusual for an informant to deal with one particular person alone?

A No, that's not unusual because the safety of the informant is always a matter of prime consideration, and, therefore, the fewer people that will be aware of his identity and deal with him is the preferable state, particularly from the informant's point of view. From the law enforcement's man point of view, if he can, he would like to introduce a colleague or someone else to help him in the many things he has to do in dealing with an informant. This is a very difficult thing to arrange sometimes. Sometimes it can be arranged, sometimes there is very great resistance to it.

Q Is it unusual for a prosecutor or district attorney to deal with an informant alone?

A It's not unusual if the prosecutor has involved himself in the investigation of cases. In the field of organized crime, it has become a standard practice. It has been recognized to avoid legal error to prove the elements of proof necessary in a crime. It's most helpful that the prosecutor be directly involved in the investigation. As a matter of fact,

I think after that was demonstrated in the Greater Metropolitan Area of New York as a successful means of investigating organized crime, the entire Federal Government took this as part of their direction.

Q Now, the information that is provided by an informant, is that always on target?

A It will vary and therefore, because it does, there is always a constant re-evaluation of the informant as to his reliability, as to his credibility, as to the value of his information. This kind characterization is not made easily over a short period of time. It will be a period of time. At some times his information will be very valuable, some times less valuable, some times it might not be valuable at all, but he's dealt with over an extended period of time with this constant re-evaluation to see if it will be continued, whether his information is true, is something you always check; an informant's information is never taken at face value. You look to prove or disprove it. A good professional will be objective about that, would be just as anxious to prove or disprove what his informant tells him.

Q Would it be vitally important if some of the information that an informant provided has been in the newspapers?

A No, I think that would have to be given a certain

amount of weight value and balanced against other information that you have, and other information he's given you on other occasions. I would not make that critical in a single instance at all.

Q And information that would indicate a leak in a law enforcement agency, would that be of vital importance, that type of information?

A I would give that the highest priority any professional and law enforcement would. If there is a suggestion that the integrity of your unit or the integrity of an investigation has been prejudiced in any way, I think I would give that the highest priority; everything else would be relative to that. I don't know if I would want to continue to gather more evidence until I had first addressed that possibility, doing that would be counterproductive. I would give it the highest priority.

Q And this evaluation and re-evaluation, Mr. Salerno, who has to make that?

A Well, I think that has to be made by the person who is handling the informant, who is getting this information. He has to, as I said, check and cross-check constantly. He has to look for some corroboration, something that will disprove. I don't think there is anyone to make that except that man must keep his objectivity in so doing. If he's a person who works

for a superior officer, that superior officer as part of his office management would exercise that evaluation.

Q At my request, did you read Defendant's Exhibit L?

A I read what would be a copy of this; yes.

Q And if I told you that over that five-year period, $19,750 is alleged to have been paid to the source of that information, would you in your capacity call that an undue amount?

MR. DRUCKER: I'll object.

THE COURT: I think this is the exact information that I excluded at your request before. However, if you think it's part of a defense, I'll allow it.

MR. DRUCKER: I submit what --

MR. CAHN: I withdraw the question.

Q In viewing Defendant's Exhibit L, from your experience, Mr. Salerno, would that be the kind of information that one would use to corroborate and have corroborated?

A Yes, it meets types of information that I have seen collected from other informants, particularly in the sense of general intelligence information, which you would certainly be looking to see if it came from other sources. One of the most important things in handling an informant is to make sure

that when you think you are getting it from three sources, it's not really one that all three of them have heard it from because if you can establish that it comes from three independent sources it has much greater value than if you can determine those three people told you that it had only one original source.

Q If these was evidence here that information about a Long Island Jewelry Exchange robbery, one Magin, one Esposito, it would be important and interesting, would it not, to have it received from a third completely different source?

A Yes, if the several sources were identifiable to me as completely independent sources; that would tend to give me a higher evaluation of the information and of the people who gave it to me.

MR. CAHN: Thank you.

CROSS-EXAMINATION

BY MR. DRUCKER:

Q Mr. Salerno, if one or two sources plus a local newspaper had printed the information previously, wouldn't that make it a little less worthy or worthwhile?

A Less worthy or worthwhile than something heard for the first time.

Q If the information, number one, had been in a

local newspaper and, number two, a couple of informants already gave it to you?

A I would try to make a determination if he wasn't in effect giving me what he read from the newspaper.

Q If he was pulling out from a public newspaper, would you -- you could go out and buy the newspaper for fifteen or twenty-five cents?

A Yes.

Q You wouldn't have to pay an informant who was parroting back something from the newspaper?

A If I thought it came from the newspapers, I would not give it a high evaluation.

Q By the way, assuming that a highly sensitive informant was imparting information to you, what would you do with this information?

A Well, I would first of all try to characterize it and see if it had any specific character as hard evidence in a prosecution; if it didn't lend itself to that effort, I would say what value it had as intelligence information. I would seek to make the best use of that information, and the way in which I would do that might vary, the way in which it might vary might control the areas of disseminating that I might make of that within my own unit or other law enforcement agencies. It might include who I would impart it to. I

certainly would be trying to guard my source and the identification of my source.

Q If an individual came to you and said he was a high-level mob courier, would that be of interest to you?

A Yes.

Q Would it be of interest for whom he was couriering or getting information or data or products?

A Yes.

Q You would want to know who is your West Coast connection, who are you working for in New York; what are these people transporting back and forth?

A I would try to develop his areas of knowledge so I could de-brief him. I think I would want to know as much about him as I possibly could.

Q Is it fair to say that an informant who doesn't testify in the grand jury that he's worthless, generally speaking, than an informant with light information who is willing to testify in the grand jury?

A That's not true.

Q Given two informants, the one that is willing to testify --

A I'll give you -- Robert Kennedy described the testimony of Valachi the greatest break-through, and yet Mr. Valachi only testified in one particular case with

specific evidence of hard value that met the rules of evidence. He testified in this very district. It resulted in a conviction of Carmine Persico --

THE COURT: Don't give names.

THE WITNESS: Yes.

Q Well, given two informants with equal status and equal information and one willing to testify and the other one isn't, you have to make a choice which one you are going to give up, aren't you going to give up the one who is not going to testify?

A It depends on what informant he would --

Q I keep putting into the equation the information that each has is identical, identical information, one says I'm coming into court and I'll testify, Mr. Salerno; the other one says, same story -- no, not me, I'll give you the information, but I'm not testifying against anybody. Wouldn't you say that the one who is going to testify is more valuable than the other?

A No, I think a very big decision, Mr. Drucker, is the time you surface your informant and you make the adjudication that the specific testimony -- the FBI faces this --

Q Would you accept my hypothetical theory, equal informants, equal information, exactly the same information,

one says I will testify and the other says I will not testify; wouldn't you agree that the one who says I will testify is more valuable than the other with equal information who says I will not testify?

A If I am limited in not going beyond the information that you have given me, I would say yes; but I would consider whether surfacing him as a witness and thus ending his benefit to me as an informant is worth the counter values that I would have to consider.

Q Would you agree that an informant whose information leads to seizures of contraband is worth more than an informant whose information doesn't lead to seizures?

A On the basis of what you said, I can't make that evaluation.

Q Would you agree an informant who gives information that leads to indictments is more valuable than an informant whose information doesn't result in indictments and convictions of organized crime figures?

A Yes, I do.

Q Would you agree that an informant who provides specific information which gives you leads, which are subsequently followed up and corroborated, that he's more valuable than an informant who just gives you general information with no leads to follow up on?

A I think the more specific the information can be the greater the value.

Q Now Mr. Cahn asked you something about an informant whose information appeared in the newspapers, if I'm not mistaken, you mentioned you wouldn't make that critical determination, in a single instance?

A That's right.

Q How about in repeated instances where an informant's information was in local newspapers time after time after time before he told it to you?

A I think I answered that question to you, too. I indicated if I thought he was getting it from that newspaper I would call it to his attention and indicate to him that he would have to do better than that, it would be quite possible for someone to give me information and if I were assured he had not gotten it from the newspapers I would feel differently.

Q Were you subpoenaed to appear here today?

A No.

Q Are you being paid any fee to testify?

A No.

Q Are you a friend of Mr. Cahn's?

A I'm a professional friend of his, by that he's not been to my home nor he to my home. I do know him a long

time, first as an Assistant District Attorney and then as a District Attorney of Nassau County.

MR. DRUCKER: Thank you, Mr. Salerno.

THE COURT: Is there a redirect?

REDIRECT EXAMINATION

BY MR. CAHN:

Q Reading Defendant's Exhibit Q, Mr. Salerno, this statement was read:

"In the final analysis regardless of the kind and amount of reward, the maintenance of a good informant depends basically on his belief that his contact is being honest with him in all matters."

Do you think that's a correct and true statement?

A I think that's critical in the relationship.

Q And therefore, if an individual gives his word to an informant, would you say it's critical that that individual keep his word to that informant?

A Yes.

MR. CAHN: Thank you, no further questions.

THE COURT: You are excused.

Anything more for the defendant?

MR. CAHN: No.

THE COURT: Mr. Drucker, is the Government through?

MR. DRUCKER: No, sir, rebuttal.

THE COURT: Let me tell the jury this, I said when I began we might sequester the jury during the period of deliberation. It looks now we'll able to make the summations tomorrow morning and have the instructions to the jury probably in the early afternoon. I doubt if I'll get it in in the morning.

If you could decide the case before you go home at night; if not, these are the instructions that I have from the marshal.

You should bring an overnight bag, if you can't it yourself, someone may leave it in the marshal's office between nine o'clock and five o'clock. During the overnight, there will be no calls or messages except through the marshal. It's best not to bring in an automobile. We don't have facilities or we don't permit storing cars in the building overnight.

(Continued next page)

The transportation to and from the hotel will be taken care of by the marshal. Each of you will have a private room unless someone requests to share one. There will be no television, newspapers or reading material, and the suggestion is by the marshal, since going out to dinner and coming back is a time-consuming affair that we work until the early evening and then you will be taken to the hotel for dinner and we'll have a coffee break during the deliberation, things can be brought into the jury room, and the marshal will get you back here 9:15 on Friday morning, so I think you should come prepared to stay overnight tomorrow, although you are free to decide the case earlier.

I'm not sure whether there is anything more tonight. I'll ask you to go back to the jury room, and then I'll call you back in.

If you're asking about the alternates, in short trials I've had to use one or two alternates. We are in the third week, and everybody has been here on time but there are only twelve jurors that deliberate, so the alternates will bring in the bags only in case somebody falls away between now and early tomorrow afternoon. It will just be twelve jurors sent to the hotel.

Go back to the jury room for a few minutes,

please.

(Whereupon, jurors excused themselves.)

THE COURT: I'm not sure that I need to keep the jury at all any more, but I thought I would to see what develops at this point.

Mr. Cahn may want to renew his motions.

MR. CAHN: Yes, your Honor.

At this time, defendant moves for a judgment of acquittal, based on all of the evidence before the Court, and the arguments heretofore made by the defendant with the same force and effect as if he were to fully make them at this period of time. The Govern-
[illegible]t has failed to prove beyond a reasonable doubt that the billing to the County of Nassau was not for the purpose of an advance, and the Government has failed to prove that the monies -- beyond a reasonable doubt; that the monies received from the organizations charged and the organizations which invited the defendant to participate in their programs, that these monies were not returned to the county.

Each of the witnesses related to the organizations involved in the indictment, and the witness related to the law enforcement testified that if the monies that were paid to the defendant were used to repay the County of Nassau an advance, they would have

absolutely no interest in the manner in which that money was repaid and they would not consider the amount that they paid due was reimbursement. I submit to your Honor that there isn't a scintilla of evidence offered by the Government not only beyond a reasonable doubt, but beyond any doubt that what the defendant intended in this particular case was to have the organizations which invited him to participate in their programs pay for those trips, pay for the expenses of the trips, and that the monies received from the County of Nassau were advances. Mr. Christ was crystal-clear when he stated that the county would not pay the expenses of trips for organizations and business which were not county-related and that he would expect if the defendant were on -- or if any county employee was on a trip in behalf of the county and received monies from another source, he would expect that money to be repaid. His exact words in this particular instance, after his investigation, was that the defendant short-circuited the procedure by failing to put in -- by not putting monies received directly into the treasury and thereafter using them to pay the informant by use of a claim.

He stated he accepted the affadavits of the defendant in lieu of those claims. I submit to you

that in view of the intent of the defendant as clearly enunciated in his testimony --

THE COURT: Of course, the jury may not believe the testimony.

MR. CAHN: I understand that, your Honor, but the testimony in so far as the defendant is concerned when it is not rebutted in any way, does no longer become a question fact, it becomes a question of law as to whether the Government has sustained the burden placed upon them of proving the defendant's guilt beyond a reasonable doubt.

I submit to you that in view of the testimony of Mr. Christ; in view of the testimony of the defendant, that their billing of the County of Nassau and their billing of another entity does not in and of itself raise any presumption of guilt since it is clearly enunciated by the controller of the county and by the witnesses involved with these organizations that the monies used were advances by the county and repayments from the organizations to the county; and I submit, that the Government has failed to prove beyond a reasonable doubt any other interpretation.

THE COURT: Let me hear what Mr. Drucker has to say.

MR. DRUCKER: First of all, the county, of course, is not alleged to be a victim in this case. Secondly, the indictment alleges that the money was taken from the various organizations by concealment of material facts, and that it was used for purposes unrelated to the goals and aims of these organizations, and I think that that would be the case even if Mr. Cahn's testimony was accepted as true by the jury. I think it would still be held not to be within the goals or aims of these organizations, but in any event, I submit, that there is a tremendous question of credibility which is certainly in the juror's provence to resolve, they do not have to accept Mr. Cahn's testimony as to what his intention, which was never disclosed to anybody else, was with regard to these monies which he received, and it's going to be the Government's contention that based upon the evidence they should disregard Mr. Cahn's testimony in that respect, it's a factual question and not one of law.

THE COURT: Well, the issue in one of the paragraphs of Count 11 to 45, it was part of the scheme that the defendant did not disclose to the above-named organizations the fact that the claims included requests for reimbursement for travel and accommodation identical to those he was presenting concurrently to Nassau

County and those in fact were paid by the county, and while you have answers to hypothetical questions, the question ofwhether NDAA should have paid your expenses, if they knew that you had submitted a claim to Nassau for the same expenses, it was never disclosed to them.

MR. CAHN: Your Honor, the testimony is clear, a claim to the County with the words "advance."

THE COURT: Let me see the claims. Do you have the exhibits? I don't think they said "advance."

MR. CAHN: I could point to Mr. Christ's testimony wherein he clearly states that a claim presented to the county with the word "advance" for a trip to San Francisco would not have been paid. He clearly stated in order for the prosecution fund to be replenished or in order for the defendant William Cahn to receive a collection from the county for advances that he himself laid out, the advance would have to clearly list what the purposes of the expenses were.

THE COURT: None of these claims say "advances."

MR. CAHN: That's the very point. Mr. Christ stated it could not have been paid if it said "advances."

THE COURT: In other words, your description of Mr. Christ's testimony destroys your argument.

Mr. Christ is saying that the funds could not be repaid to you if they were advances.

MR. CAHN: The claim was labelled just "advance." He said that the county would not honor such a claim, that the amounts advanced -- that the purposes, the exact expenses of the advance had to be listed on the claim.

THE COURT: You are arguing that each of these claims, although it did not say advance, was intended as an advance, that's a jury question.

MR. CAHN: I submit to you there is absolutely no evidence to the contrary and therefore the Government has failed, assume the burden.

THE COURT: I think the only evidence is your own testimony which is somewhat contrary to the inferences from the documents themselves.

MR. CAHN: I beg to differ with your Honor. I think they are in exact accord with the testimony of the defendant, the Controller Christ and each and every one of the documents submitted that the words claims submitted to the county -- for the sake of discussion, say, on a trip to San Francisco, if a thousand dollars was taken from the Prosecution's Fund, Mr. Christ stated that I could not put in a claim to the county, advance one thousand dollars for

trip to San Francisco.

THE COURT: You could take your NDAA money and put it back in the Prosecution Fund.

MR. CAHN: That is exactly what is claimed to have happened here, and Mr. Christ said he accepted it with the short circuit of not putting it back into the fund.

THE COURT: You could argue that to the jury. I'll deny that motion on that ground.

MR. NEAL CAHN: Your Honor, may I make certain comments with requests to the charge?

THE COURT: Well, I'll send the jury home.

(Whereupon, jurors re-enter the courtroom and are now seated in the jury box.)

THE COURT: Suppose you all be seated for a few minutes. I could have excused you before. We are going to go ahead tomorrow with the summations. You are at a critical stage as you doubtlessly know. YOu have heard all the evidence, the interpretation of the evidence is something that will determine how it's organized by counsel in their summations and what I tell you about the law that's going to apply, so still keep an open mind, keep resolving the evidence so you remember it clearly when you go to deliberate and be especially careful not to talk about the case in little

groups or with anybody else anywhere, and not to talk about anything that may be in the newspapers, the television or radio, about the case, and not talk to any of the people in the courtroom if you see them tonight or tomorrow when you come back. I guess even the alternates should bring in an overnight bag, even though they may not be needed, and the rest of you can be prepared to stay overnight, if that's what is necessary in order to reach a verdict.

There are forty-five counts. While there is considerable similarity, you may have to give enough study that I'm not going to urge you to try and decide it before the end of the day. That would be entirely up to you tomorrow. You are excused, good-night, with those admonitions.

We'll resume tomorrow at 10 O'clock tomorrow.

(Whereupon, Court recessed for the day in this matter.

* * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Arnold Tolkin	6	19			
Joanne Bloom	46	54			51
George Papademus	63	69	83	85	
Dennis Brogan	86				
John Dorcas	88	94			
Henry P. Devine	107	113			
John Bjorklund	117	135	149		
Ralph S. Salerno	155	163	170		

GOVERNMENT'S (PLAINTIFF'S) EXHIBIT NO.	DESCRIPTION	FOR I.D.	IN EV.
80	One-page document	16	
81	One-page document	44	124
82	Three documents	50	
82-A	Document	51	52
83	Two-page document	53	54
84-A	Document	90	93
84-A	Document	90	
57	Document		105
85	Newspaper clipping	132	
86	Document	134	

DEFENDANT'S (RESPONDENT'S) EXHIBIT NO.	DESCRIPTION	FOR I.D.	IN EV.
T	Two-page document	56	
U	One-page document	59	59

* * * * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

1666

----------x

UNITED STATES OF AMERICA,

-against-

75 CR 645(S)

WILLIAM CAHN,

Defendant.

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 9 1976
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

May 20, 1976
10:00 o'clock A.M.

B E F O R E:

HONORABLE ORRIN G. JUDD, U.S.D.J., and a jury.

HARRY RAPAPORT, C.S.R.
Acting Official Court Reporter

130

A P P E A R A N C E S:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

By: JAMES O. DRUKER, ESQ.,
Assistant U.S. Attorney
-and-
PETER A. GOLDMAN, ESQ.,
Assistant U.S. Attorney.

WILLIAM CAHN, ESQ.
Pro se

NEIL R. CAHN, ESQ.,
-and-
HAROLD BOGIN, ESQ.,
Attorneys for Defendant.

MORNING SESSION 1668

(May 20, 1976)

(The following takes place out of the presence of the jury.)

THE COURT: The jury is all here. Is there anything you need before we bring them in?

MR. NEIL CAHN: To avoid any unnecessary interruption to Mr. Druker's summation, I have had a chance to look at the two charts which he proposes to show to the jury and I would like to make some comments.

THE COURT: First on the front page of one there is included complimentary expenses reimbursed by Nassau County.

It's the defendant's contention that refers to these trips as well as other trips not included in the indictment and were for the limited purpose as prior similar acts of showing knowledge, intent, lack of mistake, et cetera; and not for showing that the defendant received unauthorized funds itself.

They have been compiled here in an attempt to show that the defendant has fraudulantly received more funds than the defendant says. And I submit that the Government is attempting to

improperly use the similar acts and will confuse the issues and confuse the jury to the prejudice of the defendant.

Secondly, with respect to Schedule A, which is the list of counts, Government's position is not that the defendant fraudulantly received the amounts listed on this page. There are several instances where the defendant is charged with fraudulantly receiving less than these amounts. And I believe the main circumstances in which the---

THE COURT: Aren't these the figures from your chart?

MR. NEIL CAHN: They are from our chart, but they are not the amounts the Government says were---

MR. DRUKER: Mr. Cahn confuses the nature of this. This is not a larceny case, but this chart is to rebut the defendant's chart and to show that the defendant had a balance sheet, as he claims, the balance sheet.

And I concede to the jury we are not charging him with larceny of these amounts, but we want to show his chart is inaccurate. In any event, he received far in access of what he claims to

have paid to the informant. And that's the purpose of this. And with that regard, to Hawaii, Puerto Rico and London, similar acts are to prove, of course, intent, motive, lack of inadvertence or mistake. But the additional version is to show a pattern of conduct.

The only thing not proper with regard to so called similar acts is to show bad character. And in this instance it's the Government's contention the whole thing was a pattern of conduct or one chain of fraud after fraud after fraud against either Nassau County or the outside entities for the defendant to raise money for himself.

And in that regard I submit it relevant.

THE COURT: If any part of it is not based on evidence, it's a valid objection to it. If there is a thought that it goes beyond the limitations of the receipt of the evidence, I don't really follow that because the evidence was received in order to show, among other things, that the reliance on payments to Mr. Houston was not accurate.

MR. NEIL CAHN: If I am not mistaken, your Honor, all of these exhibits came in before Sam Houston was even mentioned in the case.

MR. DRUKER: What exhibits?

THE COURT: I don't know just what you mean by that. I thought Sam Houston was mentioned in Mr. Christ's testimony, and these came in after Mr. Christ. He may not have been mentioned by name.

MR. DRUKER: Your Honor totally restricted the defense in cross-examination of prosecution witnesses as to Sam Houston, not allowing to inquire into that at all. These prior similar acts were offered to show knowledge, intent, or lack of mistake and pattern of conduct.

The only reason I submit those trips weren't in the indictment is because there was no use of the mails involved. And for that matter the Puerto Rico trip is in the indictment, or at least in the exhibits which comprise part of the indictment.

THE COURT: On Page 48, at the very beginning of the case Mr. Christ was cross-examined--this was on Mr. Cahn's cross-examination about the report which dealt with payments made to an informant.

I think unless you show me there are errors

in--with respect to the accuracy, it can be used.

MR. NEIL CAHN: Specifically with respect to the complimentary trips, there is no--that is not the pattern of conduct being charged here.

With respect to--I am not---

THE COURT: It's a similar pattern because he got the complimentary rule because of being with NDAA and he was charging the county in spite of that.

You can argue about them, but you can't limit Mr. Druker's argument.

MR. WILLIAM CAHN: If I may point out, your Honor, the trips, Hawaii, London, Puerto Rico, were permitted in evidence I think by your Honor, on the basis of count 46, which indicates a charge of $100 to the NDAA for a hotel room which allegedly was complimentary.

On that basis and on that basis alone, you let the intrinsic evidence of Hawaii, London and Puerto Rico come in, which was not permitted to be used in the first trial. It has absolutely nothing to do with double payments, the payments used to pay Sam Houston, represented by that charge.

And what the defendant contends is that lumping the sums into the sums that are alleged to have been paid to Sam Houston are totally misleading.

THE COURT: Not totally misleading. You may argue that they are not comparable. But these were expenses that he billed to Nassau County, although NDAA had taken care of it by providing complimentary rooms.

MR. DRUKER: I think it's fair to say the indictment in large part, with the one exception of Count 46, charges two billings for one expense, and these represent billings with no expense.

THE COURT: This is rebuttal in the Sam Houston evidence and I will let them be used.

Bring in the jury.

MR. DRUKER: How should we treat that as far as circulating?

THE COURT: Mark it for identification as a summary of evidence.

(The jury enters the courtroom and the following takes place in open court and in the preeence of the jury.)

THE COURT: Good morning, ladies and

gentlemen. 1674

You're a very fine jury. Everybody has been listening and has been here every day and very few waits.

We are now in the stage of summation and Mr. Druker for the Government will speak first and then Mr. Cahn and then Mr. Druker will have a short time for rebuttal.

THE CLERK: Two-page document marked Government's 87.

(So marked.)

MR. DRUKER: May I proceed, your Honor?

THE COURT: Yes.

(Mr. Druker makes a closing statement to the jury on behalf of the United States of America as follows:)

MR. DRUKER: Again, as you know, this is a part of the trial you were told about earlier, the summations by counsel. And in that regard I will remind you again that what I say to you is not evidence, what Mr. Cahn says to you is not evidence, what each of us say to you is either in part our recollection of what the evidence was and is also our interpretations of the

evidence or what we submit to you should be your interpretation of the evidence, or in essence, our arguments to you based on reason or what we deem to be common sense and reason.

Now, you have heard three weeks, I think, of testimony, and probably feel like you are about to drown in an ocean of documents which had been introduced. I think there were a couple of hundred documents introduced in evidence in this trial.

In some ways it's an easy case, I submit, and in some ways it's a difficult case.

The defendant would have you believe it's an easy case for you to decide. He would say to you, I think, that you got it right from the horse's mouth, the defendant himself told you, he didn't do anything wrong. He didn't read the claims that he signed. He didn't know there was anything wrong with seeking dual reimbursement. He treated money from the NDAA and other organizations, he considered it in his head to be county money. And even though he never told it to the county or never told it to these outside entities, that's what he thought and, therefore,

it's an easy case and you should acquit him.

I submit it's not quite how it is, ladies and gentlemen. And I will go over with you, I will try not to be too long. You have been extremely attentive and I am sure your recollection is better than mine, certainly your collective recollections are better than mine. And it's not that long of a trial where you forget the evidence from a week or two ago, and I will try not to go into too much of it.

Now, I submit what this case boils down to really is a question of intent. You have counts one through ten which are under the 1001 Statute, and Judge Judd will give you the elements of the crime in his charge along with other aspects of the elements of the law.

In essence, there is no question Mr. Cahn signed those documents, and there is no question in this case, and I think Mr. Cahn would agree, that those particular documents in one through ten were sent to the various organizations in question by him or by his secretary pursuant to his direction, and those were paid pursuant to his letters.

I think there is no question in the evidence that claims were submitted to Nassau County which on their face, at least, were for airfare payments or reimbursements to travel agents, in some case to Mr. Cahn and in some case to travel agents-- I'm sorry, to the prosecution fund.

So what you really get down to in counts one through ten is the question of intent. And that's what we will talk about in great length a little bit later.

Did Mr. Cahn, number one, make a false statement; and number two, did he know and did he believe it to be false when he made it.

I think the evidence is quite clear and I will not go down it with you chapter and verse, that each of the agencies involved were funded by LEAA and the payments were made by LEAA funds. And I submit to you the representatives from the various entities testified sufficiently to establish Mr. Cahn's knowledge of LEAA nature of the fund that he was seeking payment from.

In some cases he was a member of the board or member of regents where the LEAA grants were discussed at various meetings and he received

mailings and telephone calls and it was then discussed and there was some testimony that he himself sent messages to the LEAA funding, so again the sole question for you is intent.

Counts eleven through forty-six, so called mail fraud counts, just simply stated--and again, Judge Judd will give you all the elements of the crime, and that's what counts--simply stated it's a fraud. And the reason it's here instead of in a state court is that because the United States Mails are alleged to have been used pursuant to the fraud.

And how? Mr. Cahn is alleged to have sent or caused to have sent to the various organizations the claims in question. And I think that was pretty much conceded during the course of the trial and indeed I think it was related to by the many documents, that the claims were mailed to the NDAA or the National College. I submit there is no question with regard to that.

And also with regard to the mailing back of the checks pursuant to Mr. Cahn's claims, I submit there is no issue left in the case as to that.

So what is left? Again the question of intent.

Mr. Cahn tells you in essence he didn't intend to do anything wrong and the Government has to prove beyond a reasonable doubt that he did.

And how are we going to do that? There were no mind readers testifying in this trial, and indeed I don't think it would be admissible or competent evidence. You can't take motion pictures of what goes on in a person's mind. You can't tape record what goes on in a person's mind.

So the Government is going to prove it in two ways: Number one, through circumstantial evidence--and his Honor will tell you in his charge, I believe, that circumstantial evidence is just as good as direct evidence.

And secondly, by destroying Mr. Cahn's credibility. And again, I submit, we will do that through a review of the evidence in this case.

And it's the Government's contention that on this matter of intent, that Mr. Cahn cannot and

is not to be believed. 1680

Now, just one thing to go into at the start. There has been a lot of testimony about the funding, the prosecution fund, the county investigation fund. And I will just try to clear that up for you at the outset.

Essentially, the testimony was that the county set aside $150,000 or $175,000, whatever it was, each year out of the budget for the District Attorney's investigative purposes.

Now, either within this or as a separate thing there was a so called prosecution fund. This had a ceiling of $7,500 and there were two ways the District Attorney could get money for investigative expenses. One, he would pay for the expenses out of his pocket and submit a claim to the county. This claim would be audited and if it were found to be proper he would be paid for his expenses. The second way is he could take an advance out of this $7,500 prosecution fund. He could take, for example, a $500 advance and he could go to Denver, Colorado and if he spent $500 of that county's money on county business out there, he naturally is not out of pocket.

He would then come back to the county and he would have--the balance in the prosecution fund would now be $7,000, and he would want to restore it to $7,500.

He would then submit a claim to the comptroller setting forth his expenses for travel and the comptroller would then submit it to the prosecution fund getting it back to $7,500.

Now, the advance to Mr. Cahn, if he chose to take it ahead of time, was simply that, an advance. He would have a check written on the prosecution fund against the $7,500. He would have it cashed and take it with him. When he comes back from the trip again he is not out of pocket anything. He submits a claim. The prosecution fund is reimbursed by the county and now they are not out of pocket anything.

Who is out of pocket? Well, the county would be out $500, which is proper and is expected because Mr. Cahn was traveling among other things on county business. And indeed, the testimony is if he was traveling on county business the county was ready, willing and able to pay for his expenses.

And Mr. Cahn admitted on the stand on cross-examination that if he was traveling on county business the county was willing, ready and able to pay his expenses. And in that regard the evidence is--and again from Mr. Cahn on cross-examination--that the county was ready, willing and able to pay for his informant's expenses, if indeed he had an informant. And we will talk about that later.

And he went one step beyond that, and that's why we are here and you are here. Because then he would submit claims to this outside organization for the same travel expenses and they would issue checks to him and he would cause those checks to be cashed.

And in that regard one of the allegations relating to the mail fraud is that he received the money from these organizations and he used it for purposes unrelated to the goals and aims of these organizations.

And if you believe this business about Sam Houston, I submit you can reasonably find that payments of an informant was not one of the goals or aims of the National College of

District Attorneys, at least not payments to a Nassau County, New York, informant; nor was it the goals or aims of the National District Attorneys' Association or any of the other organizations the Government contends were defrauded here.

Now, briefly on the Government's case you heard from Mr. Halstead Christ, the comptroller of Nassau County, and the claims were submitted through Mr. Christ. And he told you the standard of payment was for actuality or necessity, and I think he said actual and necessary expenses the county would reimburse. And he also said he would have great difficulty with the necessity part of it if another entity were paying Mr. Cahn's or anyone else's travel expenses.

And then Mr. Patrick Healy testified from the National District Attorneys Organization, the Executive Director. And he told you about by-law 12 of the NDAA. And that's contained in Government's 58 in evidence.

And again, remember, this is a not for profit organization and this is one of the by-laws of that corporation: It shall be the policy of

the corporation to minimize expenditures out of its general fund for traveling or other expenses incurred by officers or members relating to the corporation's business.

No reimbursement for any expenses shall be made to any officer or member where such officer or member may secure similar reimbursement from his goverrmental jurisdiction or any other similar source.

Mr. Healy told you that that by-law has been unchanged, at least since 1969 or 1970. And that's it. It is short and it's simple. It is the policy of the National District Attorneys Association and it was Mr. Healy's testimony that that policy would prohibit the payment of Mr. Cahn's or anyone else's travel expenses where another entity was either willing to pay it or was actually paying it.

And Mr. Spinnato so testified. And briefly, it related to Government 39 and 39A. And that was the trip that Mr. Cahn took with Mr. Spinnato, I think, to Houston, Texas, when he came back and when he billed the National College of District Attorneys and the County, not

only for his own expenses, but for Mr. Spinnato's expenses. And Mr. Spinnato told us he didn't know it, Mr. Cahn never asked permission to use his name and until this matter Mr. Spinnato didn't know he was doing it.

Then Mr. Dennis Debrowski testified from the LEAA. He was the financial officer for this region, I believe. And what did he tell you in a nutshell?

That LEAA guidelines and policies are that there is no specific provision that says thou shall not double bill or you can't take entities off of LEAA automobiles, but they do have the general guidelines, general policies, and his job, among other things, is to interpret those policies and guidelines.

And how had this question come up? If Mr. Cahn had chosen to ask for a ruling or interpretation on it, Mr. Debrowski would have to look to one, the reasonableness of Cahn's provisions. And there was testimony there or the provision itself dealt with what a reasonable prudent man would do; and secondly, there were some dual compensation provision and he would have

looked to that; and thirdly, there were some provisions about credits or netting out, as Mr. Debrowski testified to. And any county payments for Mr. Cahn's travel would be treated as a credit and deducted from the amount he was seeking from an LEAA grant. And had he taken all these factors into account, it was LEAA's policy that dual reimbursement was prohibited.

Again, Mr. Ron Briggs, formally with the Arizona County District Attorneys Association--I think the Executive Director testified.

What did he tellyou? Again the policies of his organization and also the policies of the LEAA, who he told you they were bound by, would prohibit paying Mr. Cahn the travel expenses had they known Nassau County or any other entity was paying those.

And then Erna Haynes testified for the Government. She was from the Dunes Hotel in Las Vegas. And that relates to Count 46 of the indictment. And Mrs. Haynes told you simply that Mr. Cahn stayed there in April of 1974 and that he received a free room, a complimentary room.

And then you will recall there was a long

confusing cross-examination by Mr. Cahn and something about checkout procedures and would this be reflected on the claim and would that be reflected on the claim. And I submit, this was intended to muddy the waters and confuse you. Because later on Mr. Cahn conceded he knew the room was complimentary and he knew the whole time that it was a complimentary room and he testified he called Pat Healy up from the NDAA and said, "Pat, I am getting a free room. Do you mind if I bill the LEAA for it?" And Healy said, "No," or words to that effect.

So why all this cross-examination of Mrs. Healy's transfer of credit, if I transferred today, when would this be on the claim, when would that be on the claim?

And again, it was just to confuse you. And I will ask you to try to keep your eye on the eight ball in this case and not be confused by the side issues.

Ira Theodore testified and he testified twice. But the first time he testified was simply about the London trip in November and December in 1971, that Mr. Cahn and other people

were on. 1688

And again, in this regard I asked you in my opening, and I will ask you again, in regard to each and every witness in this trial, ask yourselves what motive does he or she have to lie.

And Ira Theodore, you saw him on the stand. And I submit to you, he looked like a man having to testify against his best friend or his mother. He was certainly not delighted about testifying against Mr. Cahn. And he certainly had no axe to grind.

What did he tell you though? The truth, I submit. And that is that Mr. Cahn paid $395 for the trip to London, period.

And what did Mr. Cahn's counterclaim reflect? An invoice, a phony invoice, I submit, based on the testimony, to show Mr. Cahn paid $1,050.

In that regard I will be referring from time to time to the London trip, the Hawaii trip in March of '71 and this San Juan, Puerto Rico trip where Mr. Cahn also got a free hotel bill.

These are not in the indictment. Again, Mr. Cahn is not charged with any fraud involving those trips and they are not for your consideration

insofar as the indictment were concerned. These were offered by the Government and they are in evidence for you, if you believe them, to show intent or pattern of conduct, in particular, relating to Count 46 of the indictment. And that's where the Dunes Hotel room where Mr. Cahn is charged with billing the NDAA for a free hotel room. And these are offered principally with regard to that and for you to consider whether or not that was an accidental billing of a free hotel room or whether it was inadvertent.

And in that regard, you consider all the other incidents the Government showed you where Mr. Cahn got free trips or free hotel rooms and he turned around and billed somebody for it, representing he paid for it.

Luis Carisquilo and Mario Iwanaga testified. They were representatives of the Americana Hotel in Puerto Rico and the Surf Rider Sheraton Hotel in Hawaii. What did they tell you in a nutshell?

Mr. Cahn got free rooms, complimentary. He never paid for the rooms and nobody else ever paid for the rooms; short and simple.

Dean Fertitta testified from the National

College of District Attorneys. And what did he tell you?

That both LEAA policies and the College's own policy would have prohibited reimbursement to Mr. Cahn if they had known that Mr. Cahn was getting paid for his travel expenses by other entities.

And again, Mr. Cahn never told them or anyone else to his knowledge, nor did he ask permission to do it with relation to the double billing, as the Government refers to it.

And finally, Vernon Hoy testified. He had been associated with the National Police Task Force at the time that Mr. Cahn was traveling for that entity. And his testimony in short was that they applied the most restricted policies of the LEAA, the City of Los Angeles and the Los Angeles Police Department, and that their policies would not have allowed Mr. Cahn or anyone else to collect twice for the same travel expenses.

And you may recall that Commander Hoy testified from time to time individuals did come to him and state, "My home county is paying for this," and he would either prorate it or say,

"We are not going to pay for that". 1691

Again, Mr. Cahn didn't go to him. Mr. Cahn would have had to have told him about an informant and went into a whole dissertation about a confidential informant. He would just have to say, "Vernon," or "Commander," however he referred to him, "I just want you to know Nassau County is paying for my airfare since I am on County business and since I am doing business with you, too, I think I am entitled to have you pay for my airfare."

And Commander Hoy would have made an intelligent decision and I think based on the evidence you know what that decision would have been. And I submit to you Mr. Cahn would have known what the decision would have been from Commander Hoy, from Dean Fertitta, from Patrick Healy, from any of the other organizations he tried to double bill. And that's why he never asked, because he didn't wat to hear the answer; which would have been no.

Nowwe move on to the defense's case. And the first witness was Angelo Roncallo, who testified he was a good friend of Mr. Cahn's;

Mr. Cahn came to him back in January of '70, he didn't recall the exact date, and asked him, was there any way of paying an informant without going into the usual procedures of claims. And Mr. Roncallo said, "No, you can't do it."

And Mr. Cahn, from Mr. Roncall's testimony and also Mr. Cahn's testimony, said something to the effect, "If I get money from other organizations, do you care if I use that to pay an informant?"

And Roncallo's response was naturally, "No, if you get money from your rich aunt or anyone else, I don't care what you do with it, as long as it's not County money."

And Mr. Cahn and Mr. Roncallo used that phrase, "As long as it's your money and as long as it's not County money."

And consider that when you consider Mr. Cahn's testimony, that he in his head considered this to be County money and that Mr. Roncallo knew or should have known it was County money.

I submit, the first time he ever said that to anybody was in this courtroom last week.

And in that regard, isn't it interesting---

and consider this on the issue of Mr. Cahn's credibility--that some time a year or so ago or six months ago he went to Mr. Roncallo with some sort of an affidavit. And in the affidavit it said in substance that Mr. Roncallo had--Mr. Cahn had outlined the whole story to Mr. Roncallo about what he intended to do in 1970, and Mr. Roncallo had given prior approval for Mr. Cahn to get dual reimbursement or to double bill.

And Mr. Roncallo told you, number one, it wasn't the fact; and number two, that he didn't sign that affidavit. And he said, "I don't want to say Mr. Cahn wanted to get me to lie," or, "He didn't want to get me to lie. Let's just say, Mr. Druker, his recollection of the facts didn't agree with my recollection of the facts."

And then Mr. Cahn's friend or good friend, I think he said he was, Chief Spahr, Charles Spahr testified.

And at the outset Chief Spahr told you about the initial telephone call that Mr. Cahn supposedly received from this Sam Houston. He was sitting in Mr. Cahn's office back in January of 1970 and the call came through and Mr. Cahn

said, "I have to go out and meet an informant."

And Chief Spahr said, "I would go with you."

And Mr. Cahn said, "I don't want you to go with me."

And Chief Spahr finally forced himself on Mr. Cahn and followed him out there.

And then he told you later on how he got introduced to Sam Houston and he witnessed a lot of payments of money by Mr. Cahn to this Sam Houston.

And Chief Spahr, what did he do with the information? He didn't disseminate it to other organizations, he knows of no police files opened as a result of this information, but it was worthwhile information.

I submit, worthwhile for what? Nothing was done with it. And letting alone the merits of the information for later, we will get into that later. And bearing on Chief Spahr's credibility, consider this: Number one, this absurd story of his about the breakin of the car back in San Francisco in '73 or '74, whenever it was; a 30-year veteran of the Police Department, a trained, intelligent, skilled investigator; and

what does he do? He wants to find out what Sam Houston's real identity is and he goes over to the car and instead of standing across the street or walking by the car casually and looking at the license plate, either memorizing, or if he didn't want to memorize it, making a note of it; he breaks into the car and goes through the glove compartment of the car, finds a rental agreement and remembers the name, Nicholas Gentile. He doesn't know where he lives, Nicholas Gentile, or the rental company.

This is a 30-year veteran of the Police Department.

Why would Chief Spahr fabricate a story like that?

A couple of reasons. It gives a little more credibility to this Sam Houston thing. You can't have a Sam Houston story. You have to embellish it.

For instance, one time I met him at a TWA counter and I saw one Sam Houston coming out of a car and I tried to break into the car to find out his real identity and Mr. Cahn was mad at me after that.

Why no license plate? Why no address for Sam Houston? Why no Avis or Hertz or National, whoever the rental car company was?

Because that might make it easier for the Government to track this thing down and to prove that nobody named Nicholas Gentile or Sam Houston rente d a car on the day in question. Just enough to make the story sound good, but not enough to let any investigative agency have leads to track it down.

And then Chief Spahr's testimony about the meal monies Mr. Cahn paid to Sam Houston, $20, $30, $80 a day, whatever it was. And you heard from him at the one occasion he saw Sam Houston get some money, I don't know if he mentioned the amount, it might have been $40. One one occasion he didn't know what it was for, he thought Mr. Cahn had tried to placate the individual, is the term he used. And then he comes in at trial, a little better story, he now remembers the meal monies stuff with pretty good clarity and it was indeed, he said, at least two occasions where he saw Mr. Cahn giving more money to this individual other than the thousand dollars or the $750.

Why? The only reason I can submit to you, as you look at Government's 1 and 46 in evidence, being Mr. Cahn's county claims, you will see a fantastic amount of money on there. And again, this is not charged in the indictment. I am simply going into a reason why Mr. Spahr, Chief Spahr will fabricate such a story. You will see a fantastic amount of money for meals, $100 a day, $200 a day, $300, $500 for trips lasting a week or so. On some occasions you will see Mr. Cahn and his entourage will have three or four hundred dollars meals listed for themselves, and the claims for the witness meals would be $500.

And why? Mr. Cahn came in and said he put down a lot of these witness billings so he can generate money to pay the Sam Houston. And I submit that Mr. Spahr wanted to help him out and did help him out, so he thought, in that regard.

Again, bearing on Chief Spahr's credibility, the Reno trip. Not one of the main issues in this case and not one of the focal points, but it goes on the question of credibility.

He came into the Grand Jury and he testified

unequivocally there were occasions they went to Reno and there was no county business transacted to his knowledge; under oath before the Grand Jury a year ago. Then he came here in trial and now again his recollection is otherwise.

I asked him about that on cross-examination and he said, "No, all trips to Reno, County business, police business involved."

Again helping Mr. Cahn out because the Government is going to offer gambling in Reno as a motive for these frauds against the various organizations rather than payments to any informant. And it would look bad if there were unexplained repeated trips to Reno where no County business was transacted.

And Mr. Cahn through Chief Spahr, another bone everytime he went out there it was County business for a County purpose.

Now, just going back for one moment on this issue of whose money was involved or whether the County was ready, willing to pay everything and there was no need to get paid from these organizations.

On Mr. Cahn's examination, I want to read

Page 641 of the transcript, Mr. Cahn. 1699

MR. WILLIAM CAHN: I don't have them listed as that, Mr. Druker.

Of my testimony?

MR. DRUKER: Yes, of May 12th.

This is Mr. Cahn on cross-examination.

"With regard to that part about other funds are not available, you testified already that Nassau County would have paid for your travel expenses on that trip. Is that right?

"ANSWER: County business, yes.

"QUESTION: Did you incur one airfare no matter how many entities you go out and see, the County would pay it?

"ANSWER: For County business, yes.

"QUESTION: Isn't it a fact, or at least to your knowledge, that the County would also pay for your informant, Nassau County informant?

"ANSWER: Absolutely.

"QUESTION: So Nassau County then was ready, willing and able to pay both for your travel and for your informant, right?

1700

"ANSWER: That's correct."

And in that regard, don't get confused, don't lose sight of the issues.

The Government's contention here, quite simply, is that there was no informant, or to break it down, either there was no person whatsoever, and this is a total fixation; or if there was a person Mr. Cahn was paying money to, he was not an informant.

Based on the evidence there is no way you can determine he was a Con Edison meter man, ablackmailer, a gambling collector. But I think you can reasonably infer he was anything but an informant if indeed there was an individual.

Now, continuing on.

Mr. Spinnato testified as a defense witness in his second appearance at the trial and he told you that he witnessed Sam Houston payments on occasion; that he said this informant, like any other informant, was notworth two cents in his opinion.

And I think the Defendant's L in evidence, the Sam Houston activity sheet, I submit to you, bears that out.

And furthermore, Mr. Spinnato--and this relates to what I just said to you a minute ago--Mr. Spinnato conceded Sam Houston could not have been an informant looking back now and knowing what he knows now about the case.

And Mr. Munoz and Mr. Solomon testified, formally of the Americana Hotel in San Juan, as a defense witness. And what did they add to the case.

Mr. Cahn was supposed to receive free rooms at the Americana Hotal in San Juan; that he did receive free meals at the Americana Hotel in San Juan, and he never paid for the room and nobody ever paid for the rooms.

And again, his claim to the County, however, which is part of the Exhibit 17, the words "comp" or "complimentary" are deleted from the photocopy of the hotel bill he submitted to the County. And he was paid by the County, not only for himself, but for Det. McGee, and I think Mr. Robert Alberto from his office.

And where did that money go?

To Mr. Cahn's pocket. And I think he told you, he owes it to the County and from that I think

you will infer he is to pay it back someday. He has owed it from May of '72, I believe. That's four years ago.

And Lee Middleton testified as a defense witness. And what did he add to the case?

A couple of years ago in San Francisco he saw a guy in Mr. Cahn's room and the guy resembles the composit drawing of Sam Houston. He doesn't know who this individual was. I think the testimony was he didn't speak to him. And in essence I think he added nothing to the case.

Sgt. Lang. Other than the fact that he doubled his salary within a couple of years that he became liason to Mr. Cahn, I submit he didn't add very much other than corroborating Mr. Cahn or throwing Mr. Cahn a bone; from time to time Mr. Cahn would relay information to me and ask me to check it out.

He didn't see any Sam Houston. He didn't hear of any Sam Houston. And he didn't know of any Sam Houston. And that's the evidence.

Mr. Randall, Mr. William Randall testified partly as a character witness, I think, and partly with regard to his relationship with the National

College of District Attorneys in which he was a trustee or board member, and also the National District Attorneys Association. And what did Mr. Randall tell you?

Again, considering the reasonableness of the situation he wouldn't consider it reasonable for any of the organizations that he is associated with to pay someone's travel expenses when another entity was paying them.

Then we get to the character witnesses. There were some 20 or 25 judges and ex-judges and prosecutors and ex-prosecutors.

And I submit to you, it was an impressive array of individuals. And I submit, they told you the truth. Mr. Cahn's reputation for truthfulness in the community in the years 1970 to 1974 was a very good one, one said, and excellent, another said, and beyond reproach others said.

And Judge Judd in his charge--I will not go into it, but he will tell you what weight you can give to character evidence. And it is evidence to be considered in that regard.

I submit to you, none of these individuals had personal knowledge of the facts in this case

and indeed all who were asked conceded that.

And secondly, do you think it was likely that Mr. Cahn was going to go to Judge Widlitz or Judge Kelly or the District Attorney of Westchester County or Scotland Yard, and tell them he was committing fraud week in and week out against various organizations around the country; that he was billing his home county for hotel rooms and trips he had received free.

So the problem of the testimony of the character witnesses is that they really didn't know what was going on. And I submit, based on the evidence here Mr. Cahn breeched whatever faith they had in his reputation for truthfulness.

But that's going to be your verdict or your decision, your findings with regard to how truthful Mr. Cahn was; not what different judges and prosecutors may have heard about it from time to time.

Mr. Cahn testified for several days, possibly the better part of a week, I believe. And I would like to go down the basic fabric of the Sam Houston story with you and examine that.

At the start Mr. Cahn told you about--after he went into his background he was again impressive and again, it doesn't really help with the determination of whether he violated the statute he is charged with violating.

He told you one day while sitting in his office in January of 1970 he got a call from somebody and it was unusual. Gladys usually receives these calls and somehow this call slipped through; and that the individual gave him some tidbits, I would like to be your informant, would you come out and meet me in Roosevelt Field.

And Mr. Cahn, a District Attorney, from time to time was under police surveillance because of threats on his life, without thinking twice about it, went out and met this individual and in fact didn't even want Chief Spahr to go with him.

Then he meets the individual and what happens in the first meeting? Mr. Cahn tells him, I don't want to buy a pig in a poke, so give me some good information so I can see whether you will be a good informant.

And this individual relates to him several

items which have been in the newspapers for months. And Mr. Cahn, I am not buying a pig in a poke, and you will be a good informant, and they start out their relationship.

And interestingly enough, this underworld currier, as Mr. Cahn says he professed to be, he remembered a three year old resolution before the New York State District Attorneys Association. He must have received the minutes from their meetings. He remembered a three year old resolution where Mr. Cahn talked about ethnic groups shouldn't be associated with organized crime per se, and the word "Mafia" shouldn't be used, or something like that.

And I submit to you that that's absolutely incredible.

And then we move on. Mr. Cahn met with the comptroller, Mr. Angelo Roncallo. And you will recall Mr. Roncallo's testimony that whatever it was Mr. Cahn asked him to do, Mr. Roncallo said no.

But in any event, we look at Defendant's L in evidence and we see the notation here, "Spoke with comptroller. After generally advising

him of problem we discussed alternatives. We discussed the fact that if investigations were concurrent with seminars or speaking engagements, the monies that I would receive from the seminars and speaking engagements even though at the same time as the investigations, would rightfully belong to me but I would use that money for payment to the informant. In this way the County would be saving money by not being charged for those monies I would have to give the informant in return for his information, only the expenses for the investigation. The comptroller agreed, but advised me to keep an accounting of how much money was paid to the informant."

One thing interesting about that, Mr. Cahn now tells you this was County money, it was always understood to be County money, the money coming from the NDAA and the National College, and he in his head treated it, considered it to be County money.

Isn't it interesting, the part I just read to you, that the money wouldrightfully belong to me, but I would use that money for payment to the informant?

Do you recall I asked Mr. Cahn several questions on cross-examination about, did you ever tell anybody that that was personal money?

No, Mr. Druker. It was always to be considered County money.

And also, the fact that Mr. Cahn said here in what I submit a self-serving recently contrived document--and in any rate, Mr. Cahn said he's saved the County money.

And if there was an informant, the County was willing to pay $19,750 for an informant, and the County was willing to pay $19,750 for Mr. Cahn's travel.

What did he do on his own? He decided to save the County half of that and he would lay it on to these other organizations without telling them the true state of the facts

Again, on the first page of the Defendant's L in evidence--and this is Mr. Cahn's own words, so he says--referring to his January 14th meeting with Sam Houston, he, meaning Sam, told me that he would use the code name Sam Houston.

Isn't that interesting? Sam, whoever this individual was, Nick Gentile or whatever, he made

up the name Sam Houston.

And again, the Government submits to you this document was contrived some years later after it purports to be contrived, in June of 1973. And it's in evidence.

Mr. Cahn lectured, I believe, for the Sam Houston State University in Texas, which, incidentally, was a double billing trip that he never told anybody about before. And then in September, I think, of 1973, for the first time you will see on Mr. Cahn's claims, the symbol "RB 15SP " which he told you was the Sam Houston symbol.

Now, other than what Mr. Devine testified to about the meeting in 1974 when Mr. Cahn was spending the weekend with Mrs. Maston and Chief Spahr, I can't pinpoint when these documents were drafted, but I submit it was after the trip to Sam Houston University that that name was deposited in his mind and then with regard to his contention again that he considered these monies to be County money, I would like to read to you from Page 235 of Mr. Cahn's direct testimony in this trial, talking about his initial meeting with

Mr. Roncallo. 1710

"Yes, Mr. Roncallo said, 'Look, what you got from anyplace else is your money and I don't care what you do with it so long as you don't also claim money from the County. So you can do with it as you wish.'"

Again, your money, meaning Mr. Cahn's money.

Mr. Cahn wants you to believe now that it wasn't his money, that it was County money.

And Roncallo's testimony--I will not go back to that--was the same thing. He told Mr. Cahn he didn't car what he did with his own money, which is common sense.

Now, Mr. Cahn premised his defense, the reason he had to go through all these convolutions and gyrations and double billings is because of a promise he made to Sam Houston in January of 1970 that he wouldn't put anything on County claims, no symbols, no giveaways, nothing.

And interesting, as you go through the Exhibits you will find starting September of 1973, claim after claim after claim which says "RB-[illegible]-SP". It directly contradicts what

Mr. Cahn wants you to believe. He was submitting claims to Nassau County. He did have the RB-15 symbol down there as an excuse for his travel and the justification of payment of his claim.

Again, another inconsistency which is based upon Mr. Cahn's credibility.

And now I would like to go in with you to Defendant's L in evidence, and that's the Sam Houston recap, to just show you again how absurd this whole thing is. I will not go down item by item. You heard the testimony and heard and saw the newspaper articles. Some of them are in evidence and it's not that important to this case, this Sam Houston business, but it's there, item after item after item, as in the newspapers; maybe sometimes before or sometimes before Sam Houston was purported to give the information.

Now, the point I want to make in this regard is that this isn't important so much to show that the information was worthless, which indeed I submit it was, based on the fact that it was already public. But it was to show to you

that it was ridiculousness of this document; that Mr. Cahn, Chief Spahr and Joe Spinnato made this reproduction up from newspaper articles they had back in the files in the District Attorney's office.

And look at this information that Mr. Cahn was paying thousands and thousands of dollars for.

May 11th, 1970, Sam told us that he knows we have a Grand Jury looking into the disappearance of Marie and Adamo. That's great. And it was in the newspaper two months ahead of that that Mr. Cahn had a Grand Jury looking into it. And you are supposed to say this is sort of a leak or a problem.

Sam said Marie is dead and he would try to find out about Adamo later, although he is also certain that Adamo is dead.

That's also in the newspapers, that police suspected and believed that Marie and Adamo were dead.

And Mr. Cahn should have said, "Who killed him, Sam". That's the important question. We heard one hundred times they are dead. Who

did it? No.

Did Sam give anything you can go out and get an arrest warrant on?

No. He didn't even give the name of a suspect or lead.

Did he give anything you can get a search warrant on, where the bodies are maybe located or the weapons maybe are located?

No. Worthless information which was pieced together three or four years later from Newsday clippings.

And then a number of what I submit are self-serving statements here about the 1970 elections. Apparently Sam was very concerned about Mr. Cahn's politicking and election campaigns. And I will not bore you with the details of that.

And then this Ramos business. Sam said that Ramos--Sam doubted very much if Ramos killed Sally Burns.

All right, Sam, who did kill him?

Do you see that in here? There is not one bit of information in here, not one lead. There is nothing you can get an arrest warrant

on, search warrant on, make a case on. In fact, the evidence is there were no cases made on Sam Houston information.

Asked Sam if he knew anything about the homosexual ring investigating in Nassau County. He said he had not heard anything about it at all. That speaks for itself.

Sam told us that John Lusterino, also known as Tarzan, was rubbed out by the Colombo mob because of his failure in resulting indictment in the Lakeville Manor Case.

We asked him to find out who did it, and that would be something of value, who did it.

Sam said that would be impossible without becoming too obvious, and again worthless information.

Next entry, he also informed us there was a great deal of talk at the present time with a man who was expected by the Teamsters Union, who died and whose death was listed as natural. Allegedly he was killed by forcing pills and booze down his throat.

Who was the man? Who did it? Nothing.

More election talk, and tried to dump me

from office so they can elect an Italian DA.

And further conversations with Sam. He discussed the election, th upcoming election campaign in '74.

And I ask you one thing, all of this information, and indeed all of the testimony from Mr. Cahn and his witnesses in support of him, was this information corroborated?

Okay, it might have been in the newspapers, maybe other informants gave it to us and maybe it was corroborated. It was still worth something.

Why? Why in the world all this fuss about an informant who wasn't giving any leads, wasn't making any cases, wasn't testifying, wasn't giving anything except second and third hand information? Why did the Chief Inspector of the Nassau County Police Department, why did the District Attorneys of one of the largest Metropolitan areas in the United States go? Why did the Chief of the Rackets Bureau travel all around the country meeting with this semi worthless informant, when they had other people who were testifying and were making cases and were making seizures and whose evidence and testimony

led to convictions? Why? 1716

Because he was a collector of some sort? Or he wasn't an individual or it was an excuse to travel to fun places in the United States, Reno, San Francisco, Hawaii, Miami.

Now, Mr. Cahn comes to you with a chart you saw through the file, very neat, very nice. He takes all the double billing trips and puts them in a chart and comes out within a few hundred dollars of the $19,000 he paid to Sam Houston. And from this you are to say that it does make sense, he double billed for $19,484.31 and paid Sam Houston $19,750, and he testifies he he was out of pocket $300, and it all adds up.

It doesn't add up that way. Number one, Mr. Cahn forgot the double bill for the Sam Houston State University. Why? Because he didn't think the Government knew about it. He included in there only what he thought we know.

Is there double billing in there about the National Police Task Force that we put in evidence late in there? And that's not in there, although it's listed as two additional payments.

How about the double billings before 1970? Mr. Cahn was doing this a year before he met Sam Houston. Of course, he had an excuse for each and every one of those. One was sheer mistake and another one is sheer coincidence that the figures match up within ten dollars of the figures to the County and the NDAA; and another one he didn't recall; another one an emergency came up.

Do you believe that? He remembers an emergency came up, but he can't remember anything about what the emergency was.

Why? Because if he came up with something that a relative was in the hospital or his home was broken into or something, he knows that the Government can track it down and disprove it. It's a lot easier to say, "I remember there was an emergency, but sorry, Mr. Druker, I can't remember what it was."

Those figures aren't included in Mr. Cahn's chart.

And in that regard, Mr. Cahn submitted--and it's now Government's 84 in evidence--he gave a set of figures to Mr. Dorosh who

testified yesterday from the County Comptroller's office, conveniently back in September of 1974, using a number of figures which were completely different, Mr. Cahn made it come out within $157 of the Sam Houston payments. He gave Mr. Dorosh a set of figures. And if you want to take the time, you can compare it with the figures he is giving us now. There was an $86[illegible] figure he gave to Mr. Dorosh which is not in the present chart. He omitted Spinnato's double billings or the double billings he did for Spinnato, which are in Court 37, 38 and 39. He omitted those from the pictures he gave to Mr. Dorosh. It comes out to over $1,000 by itself. He included the honorarians that he received and in the figures he gave Mr. Dorosh.

Now he says he didn't pay honorarians to Sam, he kept those and gave them to Spinnato. And why? It would put the chart off.

And again, there is no mention of the Sam Houston University and other double billings which had come in evidence here. Mr. Cahn managed to make it come out, the double billings were $19,000 and the Sam Houston payment to

$19,750. And again he gets indicted and there were some double billings he didn't tell Mr. Dorosh about because it wouldn't help the chart then.

Now he inserts that into the chart and takes out the other ones and, boom, he is within a few hundred dollars again.

Well, the Government has prepared its own chart of the expenditures, and taking the figures on Mr. Cahn's chart, they come out to $18,200.47. Then adding in the four double billings prior to 1970, another couple of thousand, adding in Sam Houston State University and the Police Task Force trip, you get another $500. Adding in the seven or eight trips Mr. Cahn told you about that are not in the indictment that he double billed, you get some more money and you get a total of $21,704.05; a couple of thousand dollars more than he claims to have paid Sam Houston. And if you add into that the monies he pocketed or received from these Hawaii and London and Puerto Rico freebe billings, you come up to about $23,000 or $23,222.

Mr. Cahn conveniently selects, fits and

chooses what fits the occasion at the time and he makes the figures balance. He has a set of figures, I submit, for every occasion.

Now, in that regard I submit he also has a story regarding each set of figures for every occasion.

You will recall a minor point, but again, bearing on credibility, with regard to a trip to Atlanta, Georgia, Mr. Cahn double billed the National College for his taxi fare and for Mr. Spinnato's cab fare, even though they both took the same cab. It was $17 and some change.

And at a previous hearing he testified and he conceded that the National College said to him that it's okay to do this. And then they must have changed their mind later on and crossed it out, and he forgets about it apparently and he comes in here and has a different story for you that Gladys just goofed up and included it and she shouldn't have included it.

Again, a different story for every occasion.

Then we move on to what I submit to you is the height of this absurdity and what I submit to you is an insult to your intelligence, this

story about the theft of documents in the Washington, D.C. mens room.

Why did this happen?

Well, at that time Mr. Cahn had been subpoenaed and had requested to bring in documents relating to this matter. To follow up the subpoena, he was sent a letter asking for the production of these documents. And in his return letter of September 20th, 1974, he states regarding the affidavits of payment to Sam Houston, insofar as the affidavits of payments are concerned, I respectfully request a few days time; and then, boom, four days later the unfortunate theft of these documents in the mens room in Washington, D.C., in the airport.

While Mr. Cahn was facing the urinal somebody slipped in beside him, took his briefcase with the original documents. And Mr. Cahn conceded--I don't think he conceded--it would be impossible to tell the age of the documents from copies, but he certainly conceded it would be much more difficult.

And I submit to you, based on your own knowledge and experience, you can't take a

Xerox copy of a document and analyze the ink for age or the ribbon, to tell what typewriter it came off of. And I submit to you that that's what happened. Mr. Cahn knew this. He knew these documents were contrived in 1973 or 1974 and that he dumped it. Where, I don't know. The Potomac River, the men's room at the Washington D.C. airport, who knows. But he dumped them to avoid having these documents analyzed, the same as Charlie Spahr didn't have quite enough information about Sam Houston from the car rental agreement to let the Government track anything down for him.

Now, with regard to Sam Houston, I submit to you that there was a Sam Houston all right, but it was somebody. Do you know who he was? He was the man on the other side of the black-jack table in Reno and Las Vegas.

And do you know who the witnesses were to the Sam Houston payments? Aside from the regular people in the casino and maybe whoever was with Mr. Cahn telling him to stop betting?

George Papademas was a witness when he saw Mr. Cahn throwing $100 bills on the black-

jack table. That's where the money was going to Sam Houston and that's where he was.

And how can you infer that? From the evidence.

Mr. Cahn cashed $12,000 in checks in Reno and Las Vegas interestingly, two cities in the country where gambling is legal and where Cahn did gamble. He didn't cash these checks in Houston or New Orleans and other places.

Why? He says he did it as a favor to them for giving them free rooms.

What kind of a favor for cashing bad checks on them? And what did he do with the proceeds?

He took the proceeds and sent them back to his bank to cover the bad checks he had just written.

Again, an incredible story.

And his four pocket routine, he told you about, where he would have a Sam Houston in this pocket and he wouldn't mix that with any of his other money. And in this pocket he would have his County advance and he wouldn't mix that with any other money. And this pocket he would have his personal money, and in this pocket he

would have money that he got from cashing checks out in the casino, and he wouldn't mix that. And he might be walking around, he said, with $1,500 in his pocket out in Reno and he would have Gladys on occasion wire him more money.

Why? Not because of the reasons he said he didn't co-mingle his funds, but because he was losing his shirt out in Reno.

And is it important?

No. I submit to you it's no more important in this case than Sam Houston. Sam Houston was offered to you as a motive, to show a good purpose in Mr. Cahn's mind to do whatever he did.

The gambling is no crime. Of course, it's a crime to use County funds to gamble, but gambling per se in Vegas and Reno is no crime. The Government offers that simply to show you what we contend is the motive for all this double billing business.

And in that regard, even if you believe this Sam Houston fact, it doesn't have any relevance to the case anymore than the Government's evidence about gambling does.

Why? Because you can't commit fraud to

pay an informant. You can't commit fraud to give money to charity. You can't rob banks to give money to the United Fund. And similarly, you can't defraud the National District Attorneys Association or any other organization because you had good intent and that you were going to use the money for charitable purposes or to pay a County informant. That's why Sam Houston is irrelevant.

But what does it do? It clouds up the issues enough. It's designed to confuse you.

What is this case really about?

It's all about Government's 1 through 46 in evidence, and 1A through 46 in evidence. That's all. The County claims for airfare, hotel bills and other expenses, other organization claims, outside organization claims, for airfare and hotel bills; fraud, short and simple.

And again, bearing on Mr. Cahn's credibility, just little things that can aid in your determination as to whether you believe or disbelieve him in this incredible tale.

You have the trip which was represented by Government 12, 12A, 12B in evidence. He went

from New York to San Francisco, to Reno and from St. Paul to New York. The St. Paul stop only cost him $32. And Mr. Cahn concedes that and it's in evidence. And he bills the NDAA $232 as though he went from New York to St. Paul, which he didn't do.

Do you see anything wrong with that?

He ought to, but his testimony is, no, he doesn't see anything wrong with that, the same as he didn't see anything wrong with double billing.

I submit, it's equally credible.

Another little one, Government's 25A and B, another trip Mr. Cahn took, a night flight for $387 and turned around and submitted a claim for $436 to the NDAA and his statement was the NDAA would have paid it and gladly, in any event.

Do you think he really believes that?

Again, he knows we don't have pictures of what goes on in his mind. We don't have any mind readers. And it's his hope you will accept as to whatever he says his intent was.

What I would refer to as cut and paste

jobs he did o n the motel bills, if you want to examine those, with regard to the Houston Oaks Hotel.

Why on earth was he having Gladys going to the trouble, having her take the top off his bill with his name and address on it and putting it over Joe Spinnato's room bill, which was cheaper, and submitting it to them. They would have paid whatever he wants.

And in that regard, reading from Government's 29 A in evidence, this involves a bill to the National College of District Attorneys on another trip, Mr. Cahn charged them $29 a night for his hotel room, although it was a lot more. And he put it on the letter; as you know, I stayed at the Houston Oaks, which was far more expensive than $29, but I don't want to charge the College any more than that. So all he charged was $25.

Why couldn't he do it in these other cases? I don't know.

There is no evidence as to it, but there is something funny about it. And again, it bears on his credibility that all of a sudden

instead of saying my hotel bill is $80, you only have to give me $25. He went through this fantastic strain of having hotel bills sliced up, transposed and Xeroxed.

And again, and I will not be too much longer, but with regard to the Hawaii trip, this bears on credibility. Mr. Cahn's claims to Nassau County, it's in evidence as Government's 64, his hotel bill from the Surf Rider Hotel, I think the evidence is clear it's Mr. Papademas' hotel bill or a copy of it; conveniently, the number and Mr. Papademas name and any identifying information is not included in the Xeroxed. Mr. Cahn claims this is what the hotel gave him and he paid that.

Do you believe that? Or do you believe the testimony that he received a free room or that it was supposed to be a free room because he was President elect of the NDAA, and indeed it wound up as a free room and he never paid for it? It wasn't a free room to the County, I should say, because he charged the County for that room.

San Juan, Puerto Rico. We have been over

that. Consider that on the issue of credibility. Again a free room or several free rooms. But he billed the County under the guise of his having paid for those rooms.

Again, London, partially free trip or wholy free trip if the $300 was for his wife. He gets a phony invoice from the travel agent, which is similar to the Hawaii trip, I submit, and he bills the County.

Now, the final thing bearing on the credibility of Mr. Cahn in this case. His defense in essence says to you, "I was right. I am telling you the truth. Everybody else is either untruthful or mistaken."

And look at this, if you will. He embellishes stories to such a degree that it must have been tempting to some of these witnesses to agree with them about conversations that Mr. Cahn says he had.

He testified with regard to the complimentary hotel room at the Dunes involved in Count 46. He told Mr. Healy, "I am getting a complimentary room, Pat. Mind if I bill the NDAA for it?"

Pat says, "Of course not. You're saving

us money." 1730

"Mr. Healy, recall that conversation?"

"Absolutely not."

Mr. Spinnato. Mr. Cahn recalls a conversation with Mr. Spinnato, Mr. Cahn calls him up and said, "Joe, you mind if I sign a check?" It's Government's 39A in evidence.

Mr. Spinnato said, "Of course not." And jokingly said, "I might indict you for forgery later on." Ho, ho, ho, and that's it.

Mr. Spinnato doesn't recall that conversation either.

And he examined his sick records, and in fact he wasn't out sick at any time around the period that Mr. Cahn forged his signature on the back of that check.

Ron Briggs. Mr. Cahn asked him, "Hey, Ron, don't you recall, Ron, we were driving to the hotel in that car and I told you I was out here on County business of some sorts?"

"No, I don't recall that conversation."

And then on his cross-examination Mr. Cahn testified that it did take place.

Ira Theodore. Mr. Cahn: "Don't you recall, Ira, I told you to take the check? I think I

paid for the room. Hold on to it and if you find I paid for the room tear it up. If you don't, go ahead and let me know and you can cash it."

The trouble with that is Mr. Theodore not only doesn't recall it, but he says it just never took place.

Mr. Roncallo. As you remember, Mr. Cahn recalls the 1970 conversation, January, in a vastly different manner than Mr. Roncallo recalls it. And the affidavit Mr. Cahn tried to get Mr. Roncallo to sign. Mr. Cahn recalls it in a way that Mr. Roncallo didn't recall it. And I submit, it didn't happen that way.

And Mr. Tolkin. Mr. Cahn said, "Arnold and I sat down in the Westbury Manor in January, 1975, and Arnold said to me, 'Bill, we discovered you did pay for the London trip. Forgive me, I'm sorry. We tore the check up and forgot the whole thing.'" Mr. Cahn tells you that.

Arnold Tolkin's recollection was vastly different again, wasn't it, ladies and gentlemen.

And this you can consider, I submit, is evidence of a guilty mind or guilty conscience, Mr. Cahn going to prospective Government witnesses

and trying to get them to fabricate stories.

He walks into ATS Travel Agency while the investigation is in its early stages and he tells Ira Theodore and Arnold Tolkin, "You know, fellows, " or words to this effect, "I paid for that London trip four years ago." Or whatever.

And they said, "No, you didn't, Bill."

And, "Would you mind changing your bills to show I paid for it? I am in a real pinch, fellows."

Sorry, Mr. Cahn, we can't commit perjury.

And then a shift of gears. "I found the invoice in my desk and I realize I didn't pay it, and here is a check for $1,050."

Again a guilty man trying to get other people to cover up for him. They knew of Mr. Cahn's reputation probably and he was taking advantage of it. They felt sorry for him. They didn't tell the United States Attorney's Office about it. He tried to use them. He tried to take advantage of his friendship with Mr. Roncallo who wouldn't come out and say Mr. Cahn tried to get me to lie for him. But let's just

say his recollection of the facts and mine didn't agree relating to the affidavit.

Why is there anything really for you to think about in this case? Only because he didn't find a receptive audience with Mr. Tolkin and Mr. Theodore and Mr. Roncallo. He did take advantage of a couple of other friends: Chief Spahr and Joe Spinnato and they backed him.

And all I can tell you, I submit that this, the evidence is these allegations came out during an election campaign, and whether or not they knew about what was really going on ahead of time, that Chief Spahr and Joe Spinnato helped Mr. Cahn out and they signed these affidavits of purported payments to Sam Houston years ago, never realizing it would go as far as it did go and as far as it had gone.

And motive to lie, you have the police chief and Mr. Spinnato, who is a lawyer, neither of whom would want to go back and admit in public they lied to support their friend in an election campaign. I submit Mr. Cahn abused their trust, as he abused the public trust, traveling week after week, month after month, year in and year

out, to all of the fun places in the country and all of the fun places in the world, having a ball, gambling, seeing shows, wining and dining and double billing all the while so he wouldn't have to pay for any of it, out of his own pocket or pay for his gambling expenses out of his own pocket.

Now, in his charge, I think, or even earlier you have been asked, and I think it's your sworn obligation, not to decide this case on any sympathy, on any bias. What you are to decide the case on and what your sworn obligation to do is to decide this case on the evidence that is before you in this trial and to apply the law as Judge Judd gives it to you to the evidence in this case.

And once you cut through all the fat in this case and you just look at the evidence, I submit that in accord with your obligation and your oath as jurors, there is only one verdict that you can return on each and every count of this indictment, and that is guilty.

And in doing so, if you want to, although I stated earlier, pretty much of the essential

elements are conceded, but if you want to take a look at these documents, you can ask for them. Look at Government's 1 and 1A, 2 and 2A, if you want to, and 3 and 3A, and so forth. And that's what this case is all about, and that's all it's about.

And one further point. When you consider the truthfulness of Mr. Cahn, I am referring to the certifications in Counts 1 and 2, "I hereby certify that the above including attached documents is true and correct of milages claimed. I certify I was unable to obtain transportation with anyone else in my office due to the nature and circumstances of my official duties. I further certify that other funds are not available and that I am not receiving reimbursement from any other source."

Let's see how Mr. Cahn gets around that one, I certify that other funds are not available.

He testified that other funds were available. The County was ready, willing and able to pay for the informant and his travel. It would be interesting to see how he gets around that one when he talks to you.

In any event, I'm sorry if I dragged out a little too long, and again I appreciate your attentiveness throughout the trial.

I recognize that yours is a difficult task. It's not easy. It's never easy to judge your fellow man. That's our system and both parties in this case put their trust in you, and it's the Government's hope and expectation that you will not abuse that trust.

Thank you.

THE COURT: We will take a short recess before the Government--before the defendant's summation. And the clerk will give the jury some forms so you can order lunch, which you will eat in the jury room today.

(The jury leaves the courtroom.)

(A recess was taken.)

(The jury enters the courtroom.)

THE COURT: You may now hear Mr. Cahn's summation, Mr. Cahn speaking as counsel.

Proceed.

(Mr. William Cahn makes a closing statement to the jury in his own behalf as follows:)

MR. WILLIAM CAHN: If the Court pleases,

Mr. Foreman, Mr. Druker, ladies and gentlemen of the jury:

I, too, wish to extend my word of gratitude along with Mr. Druker for your attention and for your concern. You all represent the very foundation upon which a free country exists. Your being here, your very presence will insure the continued strength of our way of life.

I now speak to you as my own counsel. Again, I apologize for the difficulty. And what I say here is not evidence. It is my interpretation of all of the evidence that you have heard, the testimony, the concessions; not the inferences, not the inuendos; the testimony, the circumstantial evidence and the law.

Mr. Druker has asked you to keep youreye on the eight ball. And I submit, he told you that because with a warped cue, th t's where he had tried to place the defendant, behind the eight ball.

He referred to an ocean of documents, and so it is.

I told you that this would be the saga of the claim forms. And I am sure by now you

believe that the saga is turned into an epic. And as the jury, you sit amidst this ocean of exhibits and testimony, exhibits and testimony offered by both the Government and the defendant.

It is the contention of the Government, it is an ocean of guilt, guilt of the defendant, guilt of 35 counts of mail fraud, guilt of ten counts of making a false statement. And I beseech you, don't be overwhelmed by the number of counts in the indictment. Don't make it the basis of, let's get out of here, let's do this on some and let's do that on the others. It's not the way you would want to be judged.

It's the defendant's claim this this ocean of evidence is one of innocence which the Government in its very summation has tried to pollute with inuendo, inference, inference upon inference, sheer speculation and guesswork.

I remind you, the Judge has already told you, any defendant is presumed to be innocent. And the Government must prove guilt beyond a reasonable doubt. The defendant need prove nothing.

And if the Government fails in the burden

that the law places upon the Government, then that ocean of innocence must continue to flow, flow free and flow clean.

May I, if you will, talk to you about the evidence, the evidence that comes from the answers of the witness, not the questions, not the questions of the prosecutor, not the questions of defense counsel; answers from witnesses and the physical evidence which is before you, plus, of course, the stipulations between counsel.

Let me first, if you will, talk about the 35 Counts of mail fraud. These counts with the exception of the last count, charged pretty much the same material elements.

And I ask you to remember that each of these material elements in each and every one of these counts must be proved by the Government beyond a reasonable doubt.

The indictment charges that the defendant devised and intended to devise a scheme to obtain money from various organizations and associations by the false and fraudulant pretense of sending to them claims for reimbursement of travel expenses and accomodations which the

defendant was concurrently causing the County to pay upon separate claims submitted by him.

The indictment further charges that it was part of the scheme to obtain money by false pretenses; that the scheme was a devise for obtaining money from the organizations and associations, which monies the defendant would be able to--and Mr. Druker remarked about this--and did expend for purposes unrelated to the affairs and activities of the aforesaid organizations and associations.

The indictment also charges that this fraudulant scheme, fraudulant scheme, included the deliberate failure to disclose to these organizations and associations that Nassau County was paying these expenses.

And the indictment charges that the defendant caused the mails to be used.

And if it wasn't for the use of the mails I wouldn't be standing in this court charged with mail fraud. If Mr. Healy gave me the check in Chicago or in San Francisco, I wouldn't be standing before you charged with this mail fraud.

If Commander Hoy gave me the check in Los Angeles for the work I performed for that organization, I wouldn't be charged with mail fraud. But what is the foundation? What is the basis of these charges?

I submit to you, it's deceit, wilful concealment and intentional fraud. And I submit to you that these must be proved beyond a reasonable doubt by the Government.

What does the evidence show as it comes from the witnesses, not the imagination of the prosecutor, but as it comes from the witnesses?

The fact that the County was billed and the association was billed, that's not in dispute. Even the fact that the mails were used is not in dispute. But it's up to you, after you hear the charge of the law from his Honor, and you must take that charge--it's up to you to determine whether the mail fraud statute was violated.

Mr. Druker impressed upon you--and correctly so--that the intent of the defendant is vital insofar as the Government's case is concerned. And he doesn't have a mind reader. There was no photographic equipment which can go into the

defendant's mind. 1742

But you can't get at it either. You can't just infer. You can manipulate an intent.

And what has the Government proved and what has it offered in order to prove a fraudulant scheme, a wilful fraudulant witholding of information? What has the Government offered to you to prove a false and fraudulant pretense?

May I, for the moment, pass Mr. Halstead Christ and go directly to Mr. Healy, Mr. Healy who is the Executive Director of the National District Attorneys Association, an organization which I was associated--excuse me, with which the defendant was associated, an organization within the defendant held numerous responsible positions, including the national president. An organization which called upon the defendant on numerous occasions to participate in the programs, to professionalize the office of public prosecutor.

Mr. Healy testified that in order to accomplish this the defendant was called upon to make numerous trips and did make numerous trips on its behalf. And these trips relate to

Counts number 11 through 27 and Count 46

And pursuant to letters received from the defendant, he sent the defendant checks to cover expenses.

He also testified, as Mr. Druker pointed out, as to a by-law, a by-law which he readily admitted he did not follow; a by-law which he readily admitted was not discussed from the time he came into the organization, to the best of his recollection.

And this was supported by Mr. Randall, the County Prosecutor from St. Paul, who also was a National President of this Association. He testified to you that there were many ways in which he did not minimize the expenses of the association which was called for in the by-laws; that he provided for various dignitaries who participated in the programs, extras, which were not in accord with the specifics of the by-law.

The existence of the by-law, however, and even if the defendant knew of its existence and even if the defendant knew or did not know whether Mr. Healy followed the by-law, is of no relevance.

It becomes unimportant.

If in fact the National District Attorneys Association was the only entity which paid for the trips listed in Count 11 through 27 and in Court 46, in determining this, in determining whether or not the National District Attorneys Association was the only entity, was the Association which paid for the trips ennumerated in numbers 11 through 27 and in 46, I ask you to keep in mind the testimony of Mr. Healy when he testified and agreed that there would be no dual reimbursement if the monies for the expenses of the trips were used to repay an advance from the County of Nassau. And he testified it would make no difference to him how that repayment of the advance was accomplished.

Speaking of that, I ask you to keep in mind the testimony of the defendant that when the trips were made, an advance from the County was taken by way of the prosecution fund, still County monies, it's the County that's advancing the money. And those monies were used to make the trip. On the return from the

trip the claim had to be submitted to the County to account for the advance.

We will come to Mr. Christ's testimony in just a while.

But following County rules, the claim had to ennumerate just exactly what expenses that advance was for. That's why it's listed, airfare, meals, hotel, taxi.

And thereafter when the check was received from the Association, it was returned to the County by way of using it for a legitimate County purpose, a purpose for which the County would be obligated to pay, the payment of an informer. We will come to that.

Nowhere, nowhere is it claimed or is there any evidence whatsoever that the defendant received expenses for trips that he did not take or for services that he did not perform. The testimony to the contrary was that the defendant did what was expected of him.

Count 46, however, one count in twelve and a half years as District Attorney of Nassau County, one count, charges that in furtherance of this fraudulant scheme the defendant obtained

money by fraudulant pretenses by charging the National District Attorneys Association $100 for hotel expenses that were provided for the defendant free of charge. No question.

But in determining whether the defendant intended to defraud the National District Attorneys Association, I again ask you to take Mr. Healy's testimony on direct examination--on cross-examination, I believe. I have it at Page 15 of the second book.

Speaking of a conversation in Washington, D.C.,

"QUESTION: Did he tell you whether or not the hotel room in Las Vegas had been complimentary?

"ANSWER: He did.

"QUESTION: And what was his response in that regard?

"ANSWER: He asked me if I recalled the conversation that he had with him.

"QUESTION: Did he tell you whether or not the hotel room had been given to him free of charge in Las Vegas, Nevada?

"ANSWER: At that conversation he did.

"QUESTION: What did he tell you in that regard?

"ANSWER: He said that he stayed at a different hotel and that he had gotten a complimentary room and asked me if I remembered a conversation I had had with him.

"QUESTION: And did you remember any conversation with him prior to this?

"ANSWER: Concerning that room. And I said to the best of my ability, and I do not remember it, but that wouldn't be unusual."

And then we go to Page 43 on the bottom, Mr. Druker on cross-examination.

"QUESTION: Now, in this conversation in Washington with me, with reference to the complimentary suite in Las Vegas, didn't you tell me that it was the policy of the Association to pay for the hotel lodging, whether or not you slept on the park bench?

"ANSWER: You are entitled to it per diem, yes."

Was there fraud? Was there intentional

deceit? 1748

I submit not.

With the defendant-- and I ask you to take all of the evidence before you into consideration, and ask you to determine--would the defendant jeopardize a career, a profession and all of the past for $100? Not that it's right to steal five cents, but take all of the evidence into consideration.

After Mr. Healy testified, the Government produced Mr. Debrowski, the financial expert from the LEAA. He gave evidence of LEAA regulations--and if you remember, with all kinds of numbers and references and re-references.

But the important matter for you to consider, I believe, is that there was no testimony from Mr. Debrowski that anyone other than the grantee of the fund received those regulations and that he certainly had absolutely no knowledge that the defendant knew of the regulations or received them.

Is this something unusual?

If I can bring to your attention the

testimony of Mr. Donald Santarelli, the National Head of the Law Enforcement Association, who was shown the regulation and he said, "I don't even remember reading this."

Is it unreasonable to believe that the defendant, who was not a grantee, didn't have them or didn't read them?

By the way, these are regulations. It's not a law; no statute. It's a regulation of an agency within the Government.

Mr. Debrowski also testified that he made many interpretations of these Law Enforcement Assistance Regulations when he was called and asked about them. And he admitted that one reading them or if one had no problem in his own mind, it wouldn't be necessary to call him for any interpretation. And I submit to you that whether or not I knew the regulation, that if there was no problem in the defendant's mind, there would be no need for an interpretation from Mr. Dembrowski.

But again, whether or not there were regulations, whether or not the defendant knew about the regulations or whether or not he

understood them, becomes totally irrelevant if the agency funded by the Law Enforcement Administration was the only entity which paid for the trip that the defendant was required to make at the request of the Association.

And in this regard I again ask you to take into consideration Mr. Debrowski's testimony, that if the money received from the Association related to and funded by the Law Enforcement Assistant Administration was used to pay an advance from the County, it would not be dual reimbursement. And he, too, testified that he would have no interest in the manner that the repayment of the advance and the form that it took, that would be of no concern of his.

And again, I ask you to remember the defendant's testimony of what he intended at the time he made the trip, that the agency that invited him paid for the expenses of the trip and the County paid for Sam Houston, the informant.

And we will come to Sam Houston in just a bit.

Dean Fertitta testified as to Counts 28 through 41. They all involve the National

College of District Attorneys. This was an organization which the Dean testified that the defendant was one of the founders, the Member of the Board of Regions, a member of its faculty.

He, too, testified as to the payments made to the defendant through the mails as a result of the trips at the request of the College. This, too, is not disputed. He testified at a grantee of the College he was concerned with LEAA regulations.

This, I submit to you is understandable. But I ask you, ladies and gentlemen, is it at all reasonable? And if you remember Dean Fertitta's testimony, to tell you and bring to your attention an oral policy of the College that he admitted was never related to any of the Board of Regions. Not that it didn't exist, perhaps it did. But there was no talk of this oral policy.

And I ask you to specifically look at Exhibit 39A, the exhibit of the forms upon which the College paid both Mr. Cahn and Mr. Spinnato. Not only was neither side, but

I submit to you that the testimony was that they typed the form, they put in all of the facts. How much concern could they have given to the LEAA regulations if the Dean permitted the sending out of LEAA monies based on that kind of report? How material could it have been to the Dean?

And yet again, whether or not there were LEAA regulations, whether or not there was a silent oral policy of the College is of totally no import if in fact the College was the only entity to pay for the expenses of the trips, which the College requested to make on his behalf.

And again I ask you to determine and keep in mind the Dean's testimony when he said and he agreed that if the monies from the College were to repay an advance from the County, that would not be dual reimbursement, and the manner that, or the form in which that repayment took place would be of no interest and concern to him.

And what did the defendant testify? Not by guesswork. The Government wants to know the

intent of the defendant. He testified from the witness stand under oath. I intended the College to pay for the expenses of the trip. I intended the County of Nassau to pay for the informant, Sam Houston.

And the claims, one through 46, I concede it doesn't say advance. I concede it talks of gratuities, meals, taxis and hotels. But those were the rules of the game established by the Comptroller. He told you, and we will come to it, that if that claim stated that I want $429 for advance, he wouldn't have paid it.

Commander Hoy testified on behalf of the Police Task Force in Count 44. This was, if you remember it, the organization which for the entire country was setting standards for police departments throughout the United States. And the defendant was part of the advisary board making up those standards, an organization funded by LEAA.

There is no dispute about the organization funded by LEAA. The dispute is to the defendant's knowledge of these regulations which were claimed.

Commander Hoy also talked about strict regulation of the City of Los Angeles.

Is it reasonable to expect the defendant, the District Attorney of Nassau County, to know of regulations involved, regulations involved in the City of Los Angeles?

But the Commander testified he followed the LEAA regulations. And he also testified that he knew as a result of a luncheon we had, that I was in Los Angeles on County business. And yet, in accordance with his testimony and as Mr. Druker pointed out, following the LEAA regulations in the strictest sense, he never asked if the County was paying any part of my trip.

How material, how important could it have been to Commander Hoy? As a police officer he testified he traveled on behalf of Los Angeles and he traveled on behalf of the City of Los Angeles he submitted claims and they were paid.

Knowing I was traveling on County business, isn't it reasonable to assume that he might know I was being paid by the County of Nassau?

But here again the Commander stated that if the monies paid from the Task Force were used to repay an advance from the County, it would not be dual reimbursement and the manner in which that payment took place was of no importance and would be of no importance to him.

These are the mail fraud counts. And it is now your responsibility, and a heavy one it is, to determine whether or not the Government has proved beyond a reasonable doubt that the defendant was deceitful and fraudulant, and whether he concealed deliberately with intent to deceive from all of these Associations, the fact that he was receiving reimbursement from the County of Nassau.

You heard from the United States Attorney the number of organizations which invited the defendant to participate in their most important programs. You heard from the witnesses the caliber of men participated. You heard from the witnesses the kind of work that they performed and the purpose of that work and what it was supposed to have accomplished. And yet he stands and tells you that I was gallivanting

around the country, wining and dining and gambling and living it up.

I submit that if I had no interest, that if I had no concern and I sat in my office and did nothing, I wouldn't be standing before you today, I wouldn't have accomplished anything either.

The United States Attorney tells you that I used these monies from the Association for aims and goals not related to these Associations, I used them--well, on one hand, on one hand he is on one side of the fence and then again he comes to the other. If Sam Houston existed, he used them to pay an informer and that wasn't related to the Association. But he didn't exist, therefore, he pocketed the money and that wasn't related to the Association. But if he existed, he wasn't an informer, he was something else, a gambling collector, a blackmailer, a meter reader, I think he referred to him. And that wouldn't be purposes related to the Association.

I submit, there isn't a scintilla of evidence, not one piece of evidence that Sam

Houston did not exist.

And I am reminding the United States Attorney, keeping his eye on the eight ball is the kind of evidence that they ask you to touch upon and make the defendant a criminal.

The defendant did not have to prove anything. But he took the witness stand under oath and he told you that he received a call from Sam Houston and that Chief Inspector Charles Spahr was there.

This vicious attack on the credibility of Assistant Chief Inspector Spahr based on absolutely nothing is incredible.

But he was there in my office, January of 1970. I testified that I went to see him and I did have an argument, as Chief Spahr testified, about going alone.

Mr. Druker said a man whose life had been threatened, whose family had been protected, went alone.

I am not on trial for stupidity. But at the time that was the judgment I made. I was overruled by Chief Spahr. He came with me. He told you what he observed at Roosevelt Field

in Long Island. 1758

Why? To lie? For a friend? An Assistant Chief Inspector of thirty years standing, jeopardizing an entire career to lie?

Mr. Druker said to you, I told them at Roosevelt Field, the defendant told them at Roosevelt Field, I am not buying a pig in a poke. You have to give the information. And look at the information he gave, something that was one or two months old. And he read something to you during the course of the trial. May I read it a little further?

We discussed finances and he informed me that he would never meet in the New York area, but because he traveled a great deal he could meet me anyplace he wanted and, therefore, he wanted expense money plus. He made it clear he wouldn't go on any payroll and he wouldn't sign anything and at no time would he reveal his true identity to me, assuring me that that would be fatal to him and to me. He also demanded my personal promise that I would not try to find out who he was and if I ever did, I would reveal it to no one. I told him under the circums tances

payment of that kind of money would be most difficult that I would have to think about it. But in no event was I going to buy a pig in a poke. He would have to give me some information now which I could evaluate.

He informed me that there was a big move on by the mob to take over the restaurants and other businesses in Long Island. He also told me that Paul Vario is a prime mover in the Golden Dome. He also informed me that there is trouble brewing between the mobs. He wasn't more specific, but stated that people were going to get killed.

With that Druker produced newspaper articles dated less than a month before, showing articles and information such as this appeared in Newsday. But let's read the next line.

I told him that he would have to give me more than that and he said that he's got to learn to trust me as much as I have to trust him and before he goes any further he would like some time to pass. We agreed that he would call me approximately once or twice a week so that we could set up meetings. And I

told him I would have to think about the whole proposition and when he called me again I'd let him know. He told me he would use the code name "Sam Houston".

Mr. Druker said to you, can you imagine that, Mr. Cahn spoke at a University called Sam Houston University, and this is the name that he took.

Proof beyond a reasonable doubt? Is this the kind of evidence you would accept as proof beyond a reasonable doubt? The fact that I spoke three years after at a University called Sam Houston University?

Mr. Druker attacked this. He didn't want to read it at all. He had attacked this and infers that it's a recent fabrication because he has four, five, six newspaper articles.

And Mr. George Lang testified to about ten notations in the Exhibit, an Exhibit which covers 38 meetings, 26 times of which he was paid some money, an amount of money which is less than $4,000 a year; an amount of money of which I had to evaluate, information which I

had to evaluate.

February 9th, 1970: After phone calls, met with Sam Houston in Denver on February 4th. He informed that all hell was breaking loose in the mobs because of the subpoenaing and jailings. Some action was planned. He also informed me that someone, as an example to the others, was going to get hit in the Golden Dome case. He would try to find out and let me know as soon as possible.

S.H. asked for money and I told him I didn't have any for him at this time, but would make arrangements to give him as much as I possibly could, within reason.

February 10th, 1970: Received phone call from Sam Houston. All he stated over phone was Richard Wengroff; steps to be taken to protect Wengroff.

Did you hear Mr. Bjorkund asked anything about that particular information? Did you hear anything about this information being in Newsday? Is this a deliberate attempt to keep the defendant behind the eight ball with this warped cue?

I submit, read Exhibit L. Take into consideration all of the newspaper articles and the testimony of Mr. Bjorkund. And ask yourselves how much information was received by the defendant and on what basis he made this evaluation and re-evaluation.

Mr. Druker asked Mr. Spinnato, "Mr. Spinnato, isn't it possible that Mr. Sam Houston was something other than an informant?"

Isn't it possible?

Oh, you have to believe Spinnato now. But when he signs his affidavit, oh, he is a liar. He did that later.

You can't be on both sides of the fence at the same time.

What did he think Sam Houston was at that particular time? The meter reader, as I asked? Was he the Uncle Louie, my Uncle Louie from California?

No question that I--that the defendant, the District Attorney, had to place his value and re-evaluate the information and pay what he thought was reasonable. But never did the defendant claim to you or to anyone else that

all of the information was valuable, that all of the information was completely unknown to the District Attorney's office, that all of the information was new.

The defendant testified, if you remember, that his information was to be corroborated with other information and his information was used to get corroboration from other informants. And I submit to you that the testimony is replete with evidence that this is common practice within law enforcement.

The defendant testified as to the strict conditions laid down by Sam Houston and why he came to me. Mr. Druker said it is just unbelievable that he would remember that three years before a resolution was passed which was brought to your attention, Defendant's Exhibit R, that he would know that.

Is it unreasonable to believe that this wasn't in the newspapers?

MR. DRUKER: I have to object to that.

THE COURT: Well, I am going to tell the jury they can draw inferences, but they can't speculate and there is a fine line there, and

Mr. Cahn can ask you to draw an inference and the jury can decide if it is within the realm of the facts.

MR. WILLIAM CAHN: Is it unreasonable to believe that an informant wouldn't know that, an informant involved with organized crime?

I submit, if I refused and did not want to follow the prerequisites and conditions set down by Sam Houston, I didn't have to. I wouldn't have no informant, might have not resulted in any critical action to Nassau County.

Ladies and gentlemen, the acceptance of Sam Houston was within, I am sure you will agree, the prerogatives, the judgment of a District Attorney. And the mere fact that he exercised those prerogatives and what he believed to be the best interest of the People of Nassau County, places him in the position he faces today.

We talked about the fact that no vouchers would create a serious problem about payment. I testified--the defendant testified, excuse me--that this was a problem.

The defendant--the comptroller, Angelo Roncallo, testified that he had a meeting with the defendant in his office at the defendant's request.

As defense counsel, in the opening, I told you there is going to be a difference in the versions of the meeting that took place. And I submit to you, the evidence indicates just that.

But the important matter, I submit to you for your attention, is that a meeting did take place. The defendant requested the comptroller to come to his office and it was testified to that this was unusual. Mr. Roncallo testified it involved the hypothetical of paying an informant without using County vouchers. And he told me it couldn't be done.

He testified that he discussed the importance of the confidentiality of the informant. And then I testified as to my recollection of the conversation.

And I submit to you, the comptroller told you the conversation was not important to him at the time; but it was important to the District

Attorney. In spite of the claim, Mr. Druker, that this is a recent fabrication, January 15th, 1970, reflects a record of that conversation.

Spoke with the comptroller. After generally advising him of problem, we discussed alternatives. We discussed the fact that if investigations were concurrent with seminars or speaking engagements, the monies that I would receive from the seminars and speaking engagements, even though at the same time as the investigations, would rightfully belong to me, but I would use the money for payment to the informant.

Now, Mr. Druker said that this is a recent fabrication. And then he says, hey, look, he told the comptroller it was his money.

Again, you can't be on both sides of the fence at the same time.

The fact of the matter is that it says we discussed the fact that the monies would rightfully belong to me. And if you remember the defendant's testimony, as a result of Mr. Roncallo's talk and telling me the money would be mine, I went and looked up the County law,

County Charter, State Law and found no money or statute that prohibited the billing of an association and the billing of the County for the same expenses; not that it's relevant. This is the evidence you take into consideration, not inferences, not inuendo, not the guesswork of a prosecutor.

In this way the County would be saving money by not being charged for those monies I would have to give to the informant in return for his information; only the expenses of the investigation.

Well, if I went on a trip for an association and at a different time went on a County investigation, there would be a legitimate expense for the County. And then if I paid an informant there would be an additional expense for an informant.

The comptroller agreed, but advised me to keep an accounting of how much money was paid to the informant.

I submit to you, Mr. Roncallo doesn't remember that part of the conversation, and I have no quarrel with him. It wasn't important

to him at that time. 1768

The fact that I came to him in preparation of trial and asked that he sign an affidavit which he told you that I said it's not your recollection, don't sign it. And from that the Government asks you to infer that I tried to get him to lie.

I ask you to take into consideration also the testimony of Mr. Roncallo when I--when he talked about, it's your money. He said if he was getting money from a rich aunt, I wouldn't have any concern. And he also testified that if I was getting money from a rich aunt I would have no reason to call him; I would have no purpose in speaking to him.

The defendant told you of the method of payment of the informant which he arranged and thought he had the understanding and approval of the comptroller. And that was whenever and wherever possible, to arrange his meetings with the Association and the County of Nassau investigations at the same time. And because of the numerous requests to speak, to participate in these seminars and these

programs and because of the nature of the investigations that were going on in Nassau County at that time, this was possible.

And again, each and every time the defendant told you that he went on a trip there was an advance in most instances, a loan from the County. That loan had to be repayed by a County Claim. That claim had to be repaid by ennumerating the purposes of the advance, the specific expenses. And that was done. The rules had to be followed in that regard, or else no money would be forthcoming at all.

The County still was the one from whom the loan was taken. And when the money was received from the Association, it was repaid to the County by putting it in an envelope marked SH, corroborated by Gladys, the secretary, and thereafter used for a legitimate county purpose, the payment of Sam Houston.

The Association was not paying Sam Houston. The Association was paying for the expenses of the trip. The County paid Sam Houston from the monies it received in repayment for the advance.

The County Comptroller didn't like the

method when he investigated it, but he accepted it.

Sam Houston was paid $19,750 in the course of five years, twenty-six times in thirty-eight meetings as indicated by Defendant's Exhibit L. And each time he was paid there was an affidavit signed by the defendant, signed by Joseph Spinnato, signed by Chief Spahr; but they are all lying. They are all part of a fraudulant deceitful scheme.

Defendant's Exhibit C is a fraud. Defendant Exhibit K, a fraud. Defendant's Exhibit H, a fraud. The testimony of Chief Spahr, lies. The testimony of Joseph Spinnato, lies. The testimony of Gladys Maston, lies, because she is a devoted secretary. The testimony of the defendant, lies.

Defendant's Exhibit J, a request by Chief Spahr to go to New Orleans to interview informants relative to gambling activities within Nassau County dated September 6th, 1973, a lie, it's a fraud.

And Chief Spahr told you while he had to do that at that time, because there was no

Police Department purpose in going to New Orleans. He had to go to Houston and his stop off to New Orleans--

MR. DRUKER: I have to object. There is absolutely no such evidence or testimony.

THE COURT: The jury can use their recollection or you can cover it on rebuttal.

MR. WILLIAM CAHN: --had to be accounted by the Police Department.

Now, as I told you, these forms, County forms in Exhibits 1 to 46 covering all the Counts, have references to specific purposes of claims. They just don't say repayment of an advance.

Page 30 of Mr. Christ's testimony, question of Mr. Christ:

"QUESTION: Now let me ask you, had there been an advance drawn from the prosecution fund for this trip which was not as yet made and on the return from the trip a claim was submitted to you as comptroller without listing the specifications, but just listing advanced to the prosecution fund, was it proper County

procedure to pay that claim?

"ANSWER: No, we would not have paid it that way.

"QUESTION: It was necessary then to list the specific use of the money claimed, is that right?

"ANSWER: That is right."

I submit to you, ladies and gentlemen, therefore, the mere fact that these claims do not contain advances, does not mean they weren't the advanced funds given to the County. And in fact, they are made out specifically for the claims is that because those are the rules that the County provided, or else the claim would not have been paid.

The advance was repaid by placing the monies in the Sam Houston envelope and then later paying Sam Houston.

The Government has offered no evidence whatsoever other than guesswork, inuendo and inference to contradict that evidence. It's certainly far from beyond the reasonable doubt required to make one a criminal.

Comptroller Christ also testified that if the defendant went on a trip for the County,

which was paid for by the County and the defendant received money from another organization, he would expect repayment to the County.

Page 39, Mr. Druker.

"QUESTION: May I ask you again if the District Attorney went on a trip for the County and he also submitted a claim voucher for the expenses incurred while on that trip, and while on the trip he performed services for another organization and received money, received a check from that other organization, would you or would you not consider that check county funds?

"ANSWER: I would not really try to ear mark whose funds were whose.

"QUESTION: No, I did not ask you whose funds were whose. Would you not say--I will withdraw the question and rephrase it.

"Mr. Christ, when the check was given by this other organization, did you not testify that you would expect repayment of that money to the County?

"ANSWER: That's right.

"QUESTION: And, therefore, may I suggest that you believe that money belonged to the County?

"ANSWER: Well, you can say that.

"QUESTION: Well, no, I am asking you, Mr. Christ.

"ANSWER: Well, I mean, if in fact a County official received payment twice for the same thing, at some point either he has got to pay the outside agency's money back to the County or the money we paid in to the claim form of the County. I do not much care, as long as we get the check in the bank.

"QUESTION: As long as you get the check in the bank?

"ANSWER: That is, the County is reimbursed to the extent of the money reimbursed to this official.

"QUESTION: And as the District Attorney of Nassau County, would you not say, and as Comptroller of Nassau County, that the obligation was to repay the County?

"ANSWER: Oh, I think so, yes."

Mr. Christ also testified that he conducted an investigation into the socalled double billing in the amount of $19,750. And he came to the following opinion:

"QUESTION: And did you not come to the following opinion: As discussed above, Mr. Cahn had acknowledged that he has made claim to and received payment from both Nassau County and other entities for the same expenses. And our examination confirms this in several cases. From the information provided us we are of the opinion that payments of this nature made to an informer are proper county charges and if they were to be submitted to this office in the customary manner would be approved to us for payment. This office does not concur, however, that deviation from the prescribed claims audit procedure was acceptable? Was not that your opinion?

"ANSWER: That's right."

I submit, too, ladies and gentlemen, that this, too, is proof that the defendant intended

1776

only organization to pay for the expenses of the trip and the county to bear the expenses of the payment to Sam Houston and he accomplished this by the method which I have explained to you a number of times.

Why didn't the defendant use the usual method?

THE COURT: You have been about as long as Mr. Druker was and the lunch isn't here yet and he will have a little rebuttal, so continue, Mr. Cahn.

MR. WILLIAM CAHN: Thank you.

Government's Exhibit 56 and 57 claims for payments to the informant. You've heard the defendant testify in twelve and a half years, not a claim form for payment to informant was ever rejected or returned, no name, just the date and number.

Why didn't the defendant use that form? Very simple reason.

The defendant testified, he gave his word. But I submit to you, you heard testimony that if it were the intention of the defendant to steal, if it were the intention of the defendant

to be deceitful, if it were the intention of the defendant to pocket $750, $500, $1,000, all he had to do--as the comptroller testified--was to submit a claim. There was no back up needed, no check was made. He could have pocketed it. I submit to you, he could have pocketed it. He could have given it to the imaginary gambling collector, created by Mr. Druker. He could have given it to the imaginary extortionist created by Mr. Druker, or he could have given it to the meter reader, created by Mr. Druker.

He did not have to involve Chief Spahr, Joe Spinnato, Gladys Maston.

And if this were a gambling collector, if it were an extortion, is it reasonable to believe that the defendant would involve more people than himself when this method of payment would have been available to him?

The defendant gave his word to Sam Houston. And as a result of giving his word, the Government asks this jury to brand him a criminal.

There is talk about the monies received, a chart. Mr. Druker showed you funds in excess of $19,750.

I submit to you, ladies and gentlemen, that when Mr. Dorosh testified, he told you that the list of monies I was giving him was inaccurate. They came from informal records.

Defendant's Exhibit O in evidence, a letter to Mr. Druker from the Defendant William Cahn enclosing the list of monies received, states to him in December the list is not accurate. You heard Mr. Lenning testify that he delivered a package December 31st, 1974. The defendant apologized to him because it was New Years Eve, last day in office.

It was conceded that the date of my testimony was--my Grand Jury testimony, was February 21st, was it?

MR. DRUKER: That's right.

MR. WILLIAM CAHN: --February 21st.

I ask you to look on the back of Defendant's Exhibit O and ask you to read the date that this letter claiming that the list is inaccurate is alleged to have been received by the U.S. Attorney.

MR. DRUKER: I object to that. There is no such allegation in this case and no such

contention.

THE COURT: There wasn't any testimony as to when it was received. If there is a stamp on the back, you can ask the jury to look at the stamp on the back.

MR. WILLIAM CAHN: Look at the stamp on the back which reads: Received, U.S. Attorney, February 24th, 9:03 P.M., '75, Eastern District, New York; three days after my testimony before the Grand Jury.

Mr. Christ also testified that the County would not pay for any trips which would not involve and did not involve County business.

I, therefore, submit to you that that was the reason the trips had to coincide. If there was no County purpose to the trip, no advance could be made.

Less than $4,000 a year; $19,750. I am not going to sit and debate whether Defendant's Exhibit P is accurate now. The defendant testified as to the inaccuracies that were alleged. In some instances honorarians were included in the list which should not have been there. In some instances there were trips there

which should not have been there. In some instances there were trips that were in there that shouldn't have been in there. And in making all the corrections, as you can see--if I may just bring this out---

THE COURT: Bring it out and the clerk will help you.

MR. WILLIAM CAHN: Thank you.

Totalling it up we are not quite correct--we used the adding machine thereafter, but with the corrections I had was $19,098.38.

And then Mr. Druker brought to my attention two additional trips, one from Sam Houston University which I didn't have and another one from the Task Force which I didn't have. And we included those and it totaled $19,687.66.

I submit to you, taking Mr. Druker's figures of $21,000, from all of the evidence in twelve and a half years, is it reasonable to believe that the defendant would jeopardize a career, a profession, his liberty for the amount of money involved?

MR. DRUKER: I object to that as a plea for

sympathy.

THE COURT: No. It's not a plea for sympathy. It's a plea based upon mathematical relations. The jury can consider it and give it such weight as they deem appropriate.

MR. WILLIAM CAHN: Less than $4,000 a year was paid to Sam Houston. And it's been conceded that Mike Fiore, an informant in Nassau County given to the Government was paid $46,000.

Mr. Christ testified, and I think it's important, in reference to Count 1 through 10; Page 30.

"QUESTION: It is a proper County procedure, is it not, and a proper County experience for the District Attorney to draw a check on the Prosecution Fund for an intended trip in reference to County business, is it not?

"ANSWER: We have allowed that. It represents an advance that we don't like to pay, but we have allowed it.

"QUESTION: And if it involved District Attorney investigations, is there

any question that it was a proper County procedure?

"ANSWER: We have allowed it, Mr. Cahn.

"QUESTION: Would it be permitted under the procedures of the County to withdraw funds from the Prosecution Fund to take a trip that was not related to County business?

"ANSWER: No, you could not do that."

Well, let's take the guesswork from Mr. Druker. That's how I answer counts 1 and count 2.

I hereby certify that the above including attached documents is true and correct if mileage is claimed. I certify I was unable to obtain transportation with anyone else from my office due to the nature and circumstances of my official duties.

I further certify that other funds are not available and I am not receiving reimbursement from any other source.

Number one, it was testified to because of the volume of papers that were signed by the District Attorney on a daily basis, sometimes

on a weekly basis, by both the defendant and Gladys the secretary, I didn't read them. I am responsible for them. I am the District Attorney. But I didn't read them.

But reading it, were there funds available for the County for this trip, the trip for the National College of District Attorneys? What does that have to do with the County of Nassau?

I am not being reimbursed from any other source and I am not receiving reimbursement from any other source.

Again, if the County was to be repayed, was I receiving reimbursement from any other source?

I submit, I was **not**. But in this particular instance, as is evidenced by People's Exhibit B and M--M is clearer--the money other than the honorarium was returned to the County.

Ah, Mr. Druker would say, he had his hand caught in the cookie jar. This is November. The investigation had started and that's why he gave the money back to the County.

I submit, if I was worried about an investigation, if I was worried about having my

hand caught in the cookie jar, if I thought I was doing something improper, why would I bill the College for something other than the honorarium? Why would I bill them for the airfare?

And the testimony was I took the money believing that the fund still owed it to me, but placed it back in the County awaiting the end of the investigation, which I thought at that time would conclude in a very short time. I was wrong.

The same applies to Joseph Spinnato. I induced him to sign and make a false statement. His money, too, went back to the County. I don't know if he read it or not, but there is no fault to Joe Spinnato. He never laid out a dime. He never had any expenses when he traveled with me. That's his testimony.

He received his honorariums each time he participated, though. You have heard his testimony.

Count 3 is the Mexico trip. You heard Gladys and I testify that there was a--I testified that there was a problem as to whether

or not the National Legal Data Center was going to pay for the expenses because it was going to be held in Mexico City. I was told to put in a claim to see. The claim was put in in March, and as the evidence indicates, the check was dated May 16th, and it was cashed sometime thereafter.

Mr. Healy testified that $25 a day was changed to $40. All these monies were changed, not by me, but by the National Center for Prosecution Management. They made the changes. So that wasn't certified to.

And it says I made a false statement. The above information is true and accurate to the best of my knowledge and I am not receiving dual compensation.

I asked you, in all of the time you have been sitting here and listening to the experts testify, have you come to a conclusion as to what compensation means?

I told you that in my judgment--again, not having read it, I have the responsibility, but reading it, compensation is wages. I received no compensation, no less dual compensation.

In any event, Gladys told you that that money--the check was cashed and it went to an individual, Hy Goldstein, who was supposed to return it to the County. In no way did it come to me. I do not have the receipt to produce. I do not have Hy Goldstein. I testified we made every effort to find him. But is the fact that I have no receipt vital to this jury?

If it is, I ask you, in reference to Government's Exhibit--with reference to the Reno trip where they have only a check stub, no letter, no check, all they have is the stub. And they say there must be a letter, but we can't find it. As Mr. Druker said, what is sauce for the goose is sauce for the gander. And there is not one scintilla of evidence that I received that money.

And I am asking you again, in making your determination ask yourselves whether for $284 the defendant would subject his reputation, as testified to, his liberty and his profession in jeopardy.

Counts 4 to 11--4 to 10 charged that I concealed a material element from these

organizations which deal with National District Attorneys--with the Law Enforcement Assistants Administration.

I submit to you that if it were the intent of the defendant to have these organizations to have the expenses of the trip, return it to the County in repayment of the advance, and have the County pay for the informant Sam Houston, then it was the intent of the defendant, as he testified to, only to have that organization pay for the trip. Therefore, there was no witholding, no deceit, no fraud, no intentional concealment.

These counts must fail.

And again, whether the elements in Counts 4 to 10 were material, you heard Commander Hoy, you heard Pat Healy, you heard the defendant. They all had some knowledge of the defendant performing County business while on a trip. And nobody thought it material enough to ask whether or not the County was paying for these trips. But it's unimportant if the defendant intended that only the organization pay.

No false statements were made. No material

facts were concealed.

Mr. Druker said--and just to answer some of his statements--that had Mr. Cahn chosen to ask for an interpretation of these regulations, you would have been told that he couldn't do what he was doing.

There was no problem with Mr. Cahn, as the defendant testified. He didn't have to. He had no problem. He didn't need any problem.

Chief Spahr, an absurd story about breaking into the car.

The United States Attorney is now standing in the shoes, 20-20 hindsight, to tell Chief Spahr how he should have gone about and investigated the car, stand there, memorize the license plate and then go into the car. That's very simple to do. But because he went into the car and saw a name, Nick Gentile, he is a liar, he is a fraud, he is an aider and abettor of fraudulant deceit by the defendant William Cahn.

No, he told that story to embellish--proof beyond a reasonable doubt--he told the story to embellish the Sam Houston existence.

The TWA story. When the defendant

testified there was a meeting of the International Association of Chiefs of Police in Anaheim and received a call from Sam Houston saying, "What, are you crazy? Every cop in the United States is there." And we met him in Los Angeles in front of TWA; an embellishment, proof beyond a reasonable doubt.

Chief Spahr gave Mr. Spahr a bone. Those were his words.

He read to you 641.

"QUESTION: So Nassau County then was ready, willing and able to pay both for your travel and for your informant, right?

"ANSWER: That's correct.

"QUESTION: So then, isn't it fair to say that other funds were available other than National College of District Attorneys or LEAA funds?

"ANSWER: No. It's not fair to say that."

The County funds were not available for the College of District Attorneys, no more than the County funds were not available for the College, no more than the College funds were available for

the County.

Sgt. Lang threw me a bone. Now, Mr. Druker attacked my credibility through a number of other trips. Let's get rid of Puerto Rico. I told you, yes, I submitted a bill for Puerto Rico, deducting--and I showed it to you--two hundred, some odd dollars as to expenses, when there was a problem that arose when I checked out of Puerto Rico.

Mr. Munoz testified that when he received a telephone call from Mr. Tolkin about a problem of complimentary rooms and he checked it out and he straightened it out. Mr. Druker conceded that Mr. Tolkin made that phone call.

I testified that the next time I heard about that Puerto Rico trip was in the middle of '75. I didn't know I owed them money for three years, but I accept the responsibility now. When I found out about it I checked into the matter and found out what was involved and learned of the facts which you heard from all of the witnesses. Some sly remark from Mr. Druker about my politicking. You heard when this investigation started, in the middle of a

political investigation. I submit to you that the evidence indicates that the defendant, because of his many investigations in which he maintained an interest, corroborated by Chief Assistant District Attorney Henry Divine, and because of his dedicated, devoted--I know it sounds immodest but his interest in the law enforcement, not only in Nassau, but throughout the United States, corroborated by the officials of all of these organizations, although he drew an advance from the County, it was the Association that paid the expenses of the trip, it was the County that paid Sam Houston. There isn't a scintilla of evidence other than in the mind of the prosecutor to the contrary.

There was no mail fraud. There was no fraudulant statement. And I submit to you that the ocean of evidence to which Mr. Druker refers still flows clear and pure. But what does he offer to try to pollute it? Indianapolis in February, 1969.

I submit to you, look at the evidence. It indicates that one leg of the trip was deducted, a second leg was not, which amounted perhaps in

an overpayment of $50.

Reno. No proof at all that these were the expenses for travel; quite to the contrary, there is no letter, nothing. And the defendant asked Mr. Healy, wasn't it for expenses of the men who attended the committee meeting?

It could have been. The defendant stated that is what it was.

Not one single piece of evidence to the contrary, other than a $10 difference of the amount of money. And this is theproof beyond a reasonable doubt that the defendant asks you--that the Government asks you to accept.

Phoenix. In twelve and a half years, as the defendant testified, there were a number of trips where emergencies arose and he had to return and go back. Is this unreasonable? Is it unreasonable that the defendant could not remember what the specific emergency at that particular time was?

Houston. I think two different amounts, totally different amounts, sometime in November of '69, but they total up to 68 cents, the County bill and the check, no letters, no, they

are missing. But the amounts total up to something and 68 cents. Ah-ha, proof beyond a reasonable doubt that that was a double bill.

THE COURT: How much longer do you think you will be?

MR. WILLIAM CAHN: About fifteen minutes, your Honor.

THE COURT: I got word five minutes ago that the lunch will leave in a few minutes. They are not as prompt as they were in other days.

See if you can do it in ten.

MR. WILLIAM CAHN: Okay.

Honolulu. George Papademas, what did I testify? I testified I checked out and paid a bill that was handed to me, paid it in cash. And as you saw from all of the evidence, that was not unusual.

My room obviously was complimentary, 1496. I paid the room 1496.

And what did Mr. Iwanaga say? That 1486, this bill was checked out at 8:52 A.M.

Our records show Mr. Papademas checked out

with one of our cashiers on March 20th at 8:52 A.M., 1971.

What did Mr. Papademas say? Sometime in the afternoon, a couple of hours before his plane at 5:00 o'clock, he turned in his key.

I testified I checked out, I testified I received a bill. I testified that I paid the bill in cash.

The Government says, look, there is no name. I paid a bill without a name. And I submit to you, here is what we received, the copy of this bill. And I ask you, when Mrs. Bloom said the name is typed, whether or not that type is going to come through on the copy.

So do you pay a bill without a name?

Ladies and gentlemen, please go through these exhibits and each time you come to the Sonesta Hotel in Houston, see if you can find a name, see if you can find any name on the bills given by the Sonesta Hotel in Houston, Texas. And ask yourselves if it's unusual.

Somebody in the hotel made a mistake and somebody made $436.80.

If Mr. Papademas didn't check out at

8:52, who did? 1795

I said I checked out and my complimentary room shows no checkout.

Now, the London trip. Mr. Theodore and Mr. Tolkin. It's an unpaid debt. It's an estimate of lost profits. We put it in the drawer. We forgot about it.

Suddenly a stamp finds its way on the back. That stamp was there because if anybody got into the drawer, they wouldn't touch it. Yet, if it wasn't stamped, they wouldn't know what to do with it.

Didn't you tell me youdidn't want the check?

Right.

Why didn't you tear it up?

We didn't want to tear it up.

Why didn't you give it back to me?

We were sorry for you.

You weren't sorry enough to tear it up?

Both came in and said, both testified, I came in and claimed I paid the bill and then suddenly, no, youdidn't.

Mr. Theodore said after we got the check,

that was the end of it and we never talked about it again, and I don't know if Mr. Tolkin ever talked about it again. And Mr. Tolkin said, "We met at the Westbury Manor and we had some lunch."

Didn't you tell me you tore the check up at that time?

No. I said we kept the check.

I am going to let a check for $1,050 in the hands of Mr. Tolkin?

Mr. Druker asked me, when you wrote this check you didn't have a thousand fifty dollars in the bank.

Isn't that what I told you on the witness stand? I said, look if it was a personal check you wouldn't get a dime, hell would freeze over. But it's a County trip and I am responsible.

Now, I paid it. Here is the check--not for $895, but for the bill that they sent, $1,050.

If you find you paid it, send me the check and tear it up. But if you're going to deposit it, let me know so I can cover the check.

Isn't that what I told you from the witness

stand?

And I submit that on cross-examination Mr. Tolkin said that it could have been him and he might have called me when he got back from his trip and asked me how I enjoyed the vacation he arranged for me. And he said I am concerned about the London trip.

What was he concerned about? I ask you, what was he concerned about? Why did he go to his lawyer when he got the check?

I was in something that was above my head.

Who was lying?

The defendant took the stand and he told you that he never had a gambling debt, he never signed a marker, he never had a line of credit at a casino.

They brought in a pit-boss from Las Vegas who told you that you could bet in cash. I submit to you, if they had one scintilla of evidence of a marker or a line of credit, it would have been before this jury. There isn't one piece of evidence that the defendant lost any more than what he testified to, three to four

hundred dollars a year. They didn't build Las Vegas and Reno on the winnings of people who attend. You go for the pleasures that it affords.

Yes, I gambled in Reno, I gambled in Las Vegas. I bleed when you cut.

And so suddenly Sam Houston becomes a gambling collector traveling all over the country, spending all this money from Las Vegas to Reno, from Houston to Washington, in the various places, spending all that money to collect a gambling bet.

Why? Because he told you, and I admit it, in five years I might have cashed $10,000 worth of checks for the reasons I gave you.

But let's for the sake of discussion talk about the $10,000 and how I lost it.

You heard my salary, $45,000 a year. In five years $10,000, $2,000 a year.

I wouldn't like it, but I think you can well believe I could afford it.

But not one piece of evidence offered to you.

The evidence here, ladies and gentlemen,

concerns a public official in law enforcement for twenty-five years, dedicated to his community, involved with the problems. And again, as counsel, it appears to be immodest, but I speak to you as my own counsel--involved with the problems of children, people and a sincerity of purpose and a nation free from organized crime.

If the defendant tried nothing, if the defendant did not do that in which he believed, he wouldn't be here today.

He is not charged with taking trips. He is not charged with having hotel suites wherein he met his witnesses and conducted his business. He is not charged with flying first class--by the way, both of which, suites and the first class were approved by the County, as the evidence indicates--he is not charged with gambling as little or as much as you might think it may be. Nor is he charged with the crime of making a bad bargain with Sam Houston.

And I ask you, do not let your personal prejudices permit you to distort your duty in this particular area.

Do not let your personal prejudices

perhaps about gambling, perhaps about first class, perhaps about traveling, perhaps about suites, destroy the reputation which was heard described by the wonderful people who were kind enough to testify as to the defendant's character.

If you do that, that reputation will be demolished, even if you do that on one single count.

Therefore, keep in mind the presumption of innocence which the defendant still carries with him and with each and every single count--and forgive for taking and imposing upon your time. And I know you will understand how important this case is for the defendant and how important it is, how important each and every single count is to the defendant.

With each count I ask you to ask yourselves, has the Government proved guilt beyond a reasonable doubt. On each count I ask you to do that, not on the basis of compromise or the desire to get this thing over with, but strictly on the basis of proof beyond a reasonable doubt and as the law, as the Judge will give it to you.

In the final analysis, regardless of the kind and amount of award, the maintenance of a good informer depends basically on his belief that his contact is being honest with him in all matters.

Let the honesty of the defendant with the informant keep the ocean of evidence, the waters clear and running free. And let your verdict of innocence based on the evidence that you hear and the law, innocent of each and every single charge, also free and clear the defendant, permitting him to return free to his family, his community and his profession.

Thank you.

THE COURT: Thank you for your patience, ladies and gentlemen. The lunch has just arrived. You can go back to the jury room and it will be served to you.

We will try to resume at twenty minutes after two and it will shorten the luncheon period for everybody else, but we will try to get as much accomplished this afternoon as we can.

(Luncheon recess.)

AFTERNOON SESSION

(The following takes place out of the presence of the jury.)

THE COURT: Everybody ready now on the Cahn case?

(No response.)

THE COURT: Bring in the jury.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: One more matter before I begin my instructions, ladies and gentlemen. The Government, as I said, has a right to put in rebuttal arguments.

And, Mr. Druker, you may proceed. And I assume you will be relatively brief?

MR. DRUKER: I will try, your Honor. There are a number of points I would like to respond to.

(Mr. Druker makes rebuttal argument to the jury on behalf of the United States of America as follows:)

MR. DRUKER: Again, I will try to be as

possible. I don't know. I'm sure it's difficult to sit there. You can't ask questions and there is no dialogue and you have to listen. So I will try to be short.

To start out with I will not shout at you or scream at you or anything, rather, I will try to appeal to your good common sense.

In my opening, you will recall, I stated that the Government would ask you in summation to use and indeed you are expected to use your good everyday common sense. And that's part of what being a juror is all about. And that's one of the reasons we don't have computers deciding these cases.

Now, to start out with I would urge you, don't be fooled by the defense in this case. I submit that if a smokescreen, this Sam Houston business. But more importantly, don't be fooled by burden of proofs here. Judge Dooling will instruct---

THE COURT: I am not really.

MR. DRUKER: Judge Judd, excuse me, will instruct you with the burden of proof the Government has beyond a reasonable doubt, and

will tell you what the elements are.

The Government does not have to prove beyond a reasonable doubt that Sam Houston didn't exist. And Judge Judd will tell you how you can consider it and not consider it.

Again, the Government does not have to prove beyond a reasonable doubt that Sam Houston didn't exist. The Government does not have to prove the negative in this case.

And Mr. Cahn told you that the Government relied not only on the testimony and evidence, but inferences and speculation and conjecture.

I will agree, you are not free as jurors, nor am I free to ask you to rely upon speculation or conjecture. I submit, Mr. Cahn was wrong with regard to inferences. You are entitled to draw reasonable inferences from the facts.

And again, I am not going to encroach on Judge Judd's authority. He will tell you about inferences and what role they play here. And I will ask you to listen to that. And if it contradicts anything I have said or Mr. Cahn has said, then you rely on what Judge Judd has

told you. And in that regard, I do submit you can infer--how can you prove what someone intended. And I submit you have to by necessity, whether affirmatively or negatively on intent. You have to draw inferences to determine what was going through the defendant's head at the time.

Now, Mr. Cahn stated something to the effect--and I assume he is asking you--to consider that maybe the mail fraud use was just tangential and the case should not be in the Federal Courts. He said if Commander Hoy didn't give him a check in Los Angeles, he wouldn't be charged with mail fraud.

And like a lot of the "if" statements made in Mr. Cahn's summation, it didn't happen that way.

And indeed, Mr. Healy said he didn't carry claim forms around with him and he couldn't give Mr. Cahn the claim forms in these various cities.

So notwithstanding the "ifs", he mailed the claim forms to the organizations and they mailed the checks back to him. It's as simple

as that. 1806

Now, with regard to Mr. Debrowski. Concededly, Mr. Debrowski testified about some pretty complex regulations and policies. The Government doesn't contend that Mr. Cahn knew of these policies, any of them or all of them in any kind of detail, that he knew of the existence of 303 (A) (4), Sub 2, or whatever else was applicable.

Our contention is, number one, that these policies existed. And although Mr. Cahn didn't know of the specific policies he might be violating, that he knew what he was doing in Counts 1 through 10, at least, that his false certification or false concealment, that he knew it was wrong, that he knew it was deceitful.

And with the possible exception of Judge Judd, there isn't a person in the courtroom who can tell you what provisions in the Internal Revenue Code, could tell you what prohibits you from taking off your gold fish bowl as a deduction. But common sense would tell you maybe, one, you better ask an accountant or, two, check with somebody from the IRS, and maybe

both.

It's just common sense. You don't have to know and no one is expected to know every rule, regulation and policy in the law. But what you are expected to do is to not act in a deceitful fashion. And Mr. Cahn is right when he said what this case is about is deceit. And that deceit did in fact violate in the Government's view the various laws and policies.

And again I submit, common sense tells you, like the gold fish deduction, he had to know there was something wrong by collecting more than 100 percent of out of pocket travel expenses; if you spend $200 for airfare and you're billing for $350. Something has to tell you something is wrong with it and you may not know it's Title 18 of the United States Code or the Mail Fraud Statute, but when you put the letter in the mail and you know it's deceitful, you are charged with the violation of those laws.

Now, Mr. Cahn told you Mr. Healy and Mr. Randolph told you that by-law 12 was not followed. And if I am not mistaken and your

recollection governs, and if you forget the question about it, you can have the testimony read back. Mr. Healy testified that that particular portion of by-law 12 which the Government has been relying on has been unchanged since 1969 or 1970. He testified that the only portion of by-laws 12 which were not followed by the NDAA were those portions which dealt with getting prior written approval for travel expenses and submitting certain written documentation afterwards, some of the painful formalities that Mr. Cahn at least with regard to the National College, Mr. Cahn may have thought demeaning.

But there is not one bit of testimony in this case which indicates the provision of by-law 12 which prohibited double billing wasn't followed.

Now, with regard to Mr. Healy's testimony, I would like to just read to you one brief excerpt in response to Mr. Cahn's argument. Mr. Cahn read to you part of Mr. Healy's testimony and I will go back a little bit before where he started so it's in context. And I am

reading from Page 14. 1809

"QUESTION: Now, in this claim Mr. Cahn requested reimbursement for a claim incurred by him in Las Vegas?

"ANSWER: Yes.

"QUESTION: In what amount?

"ANSWER: $100.

"QUESTION: And did he ever tell you that the hotel room in Las Vegas had actually been rented to him on a complimentary basis or free of charge?

"ANSWER: Not that I recall.

"QUESTION: Within the last month or so, did you have occasion to discuss Mr. Cahn?

"ANSWER: I did.

"QUESTION: Did he tell you whether or not the hotel room in Las Vegas had been complimentary?

"ANSWER: He did.

"QUESTION: And what was his response in that regard?

"ANSWER: He asked me if I recall the conversation that he had with him."

And this is the first time, I submit, Mr. Healy heard anything about this free room. And how did it come up?

I submit that it came up in a situation similar, but a little more subtle, to what Mr. Cahn tried to do with Mr. Tolkin and Mr. Theodore and Mr. Roncallo, to remember things that just didn't happen.

Here they were in 1975, I take it it was, or '76, I think he said a month before this trial, in Washington, D.C..

And again, it's the same situation you had seen with the other witnesses. Mr. Cahn is saying something to the effect, don't you remember back then I told you my room was complimentary and you said okay? Fine, you can bill it and Mr. Healy obviously is saying no, I don't recall it, Bill.

So don't get confused on that. That is in April 1974 when Mr. Cahn submitted that bill from the Dunes and had the NDAA pay it. The evidence is clear and unequivocal that nothing was said to Mr. Healy about it ahead of time. And Mr. Cahn asks you, would the defendant

1811

jeopardize a career for $100 and later on it was a couple of hundred dollars, would the defendant jeopardize his career for a couple of hundred dollars.

Number one, I submit to you, like anyone else doing something wrong, it is done with the thought he is not going to get caught and in this case it might be particularly true because he was the chief investigator or chief law enforcement official of Nassau County.

Number two, we are not talking about $100. It's the same as if I take 5,000 ten dollar bills from a bank and I stand up here and hold one up and say to you, "Would I jeopardize my career for $10,"and pick another one up and say, "Would I jeopardize my career for $10?"

We are talking about $20,000. And I don't know what tax bracket the $45,000 put him in, but $20,000 tax free is a pretty hunk of change to anybody.

MR. WILLIAM CAHN: I will object. The references to taxes is certainly not in rebuttal.

MR. DRUKER: The testimony was that this income was not reported, your Honor.

MR. WILLIAM CAHN: This is rebuttal, your Honor, and no talk of taxes or anything like that is allowed. And I ask for a mistrial.

THE COURT: No, I will deny that. There was a reference to your salary in relation to the amount involved and I think there is no evidence--I don't recall if there was evidence about it being reported. Under Mr. Cahn's theory, if he had reported the income he would have reported the Sam Houston payments as deductions and had them audited.

MR. DRUKER: There was evidence of a prior statement that Mr. Cahn said something to the effect--he was questioned about it and he said the one was for expenses and the other is for income which I should have reported.

THE COURT: All right.

MR. DRUKER: At any rate, it's not a tax evasion case. Mr. Cahn is not being charged with that. But I think you can infer or you don't have to infer, you can say that $20,000 is a fair hunk of change.

Mr. Cahn kept referring to when he got to critical points, he said there was evidence

against it, the defendant told you this and the defendant testified under oath to that.

Again, look at motive to lie and what witness in this entire case have a greater motive to lie than Mr. Cahn? And I don't have to tell you what that motive is.

Now, Mr. Cahn, for what purpose I don't know, points here to a date stamp on one of the exhibits, a letter he sent on December 31st, and on the back of which there appeared to be a stamp that appears to read February 24th. I don't know why on earth anyone would intentionally misdate such a document. There is no evidence how the stamp got on there and it's not important. It doesn't matter if Mr. Cahn sent the exhibits in on February 24th, December 31st, April 15th.

What is critical, I submit, is that he didn't in any view of the evidence submit them prior to December 24th, 1974, the date in which they were allegedly stolen from him in Washington, D.C. Airport.

Now, he also told you about all the good things that he did and the work he did for these

organizations. And I am sure Mr. Cahn did a lot of good things.

Again, what you're faced with essentially is a sort of a Jekyll and Hyde situation. Mr. Cahn was doing good things for organizations, he wrote books and gave speeches. Part of it you got to remember, he was also a politician and I am sure that he expected--well, I will withdraw that.

He did good deeds for whatever reason. But that's not what he's on trial for. He also did bad deeds and that's what it's your duty to decide, regardless of how much good he did or things he did or claims he did. The only question here is whether over the time in question he was repeatedly defrauding various organizations around the country and using United States mails to do it in some of the counts.

Now, he stated twice to you, I believe, that policies of the Association would be of no import if in fact the College was the only entity to pay for the defendant's trip. And on another case, if in fact the NDAA was the

only organization paying for the defendant's trip.

Again, it's an "if". It didn't happen, though. I think Mr. Cahn agrees, or whether or not he agrees, the evidence is that these organizations weren't the only ones paying his trips. Nassau County was also paying.

And then he tells you that I intended that--this is regardless of whether the claims say advance on it or I didn't tell anybody what I was doing, I intended that this money was County money when it came in from the outside organizations.

Now look closely at that in his own statement in Defendant's L and his testimony. He testified the checks would come in from the NDAA and the National College. He would have it cashed and that cash would go into the Sam Houston envelope. When he traveled he could take that cash out and put it in his pocket and that's the money which would go to Sam Houston.

This is an absolute fancy and fabrication for him now to come in here and respond to the indictment, although no one knew it and the

physical facts belie it, to say that in his head this was County money.

And again, with regard to the so called advances and Mr. Cahn's testimony that the County wouldn't pay for trips which weren't on County business or which were on NDAA business, in each and every one of the counts, with the exception of Count 3, Mr. Cahn's claim has on it County business, some investigation, one or more are listed. There is no question but that Nassau County would pay for his trips in such a case. Then he says, for whatever reason, if it were strictly NDAA or Nation College Business, the County wouldn't pay. And I think Mr. Christ said something to that effect.

Well, that's not the fact, however. If you look at Government's 63 and 64 in evidence, the trip to Honolulu and London, there is no County business whatsoever reflected on these claims.

MR. WILLIAM CAHN: Objection. I submit that is totally false.

MR. DRUKER: I will read them to the jury

and we will see.

Exhibit 64 states--I will read it in its entirety--trip to Honolulu, Hawaii to attend National District Attorney's Conference, taxi from airport to hotel, meals, meals, meals, meals, meals, taxi fare, gratuities, hotel and airfare; nothing about County business, ladies and gentlemen.

I will read it entirely, the claim for November 29th, 1971, for the trip to London.

National District Attorneys Association Law Enforcement Conference in London, Amsterdam, Brussels and Paris; roundtrip air transportation, hotel accomodations, transfers, taxis, luggage handling, meals and gratuities.

Now, the comptroller or the County executive would okay the trips because Mr. Cahn would attach letters or make representations that these things would benefit the County, it might help him to learn about British Law or narcotics problems in England or something. But the fact is these claims were okay, no investigations for Nassau County.

And then we look similarly to Government's

3 in evidence. That's the trip to Mexico in March of 1974, the trip to the National Conference of District Attorneys held in Mexico City pursuant to approval by County Executives attached.

That's all. No investigations. The County paid for it?

Forgetting that, even assuming that those were just mistakes that slipped through or something Nassau County would pay for trips where Nassau County investigations were being conducted, Nassau County would pay for Nassau County informants. It's that simple.

Again I submit, the evidence was twisted in regard to Mr. Hoy's testimony. If there is any doubt about it, your recollection governs. If your recollection is not the greatest and you want to have the testimony read back, then do so by all means.

I submit that Mr. Hoy testified that the presence of an aid indicated County business, and that he assumed that Nassau County was paying for the expenses of the aid. He didn't testify at any point that Mr. Cahn told him that there

was County business that he was transacting.

And I submit that Mr. Hoy assumed, and as he had every right to, that Mr. Cahn was acting honestly and not double billing.

And you heard Mr. Cahn talk about the caliber of men participating in these organizations. And he referred specifically to the National Police Task Force. And again, these other men went to Mr. Hoy on occasion when the Counties were paying these expenses or some other jurisdiction and they told him about it. Whether or not the knew of Article 303, regulation 3, sub 2, or whatever, common sense tells you that they should do something not to get paid twice.

And Mr. Cahn told you these were all real business trips that he took and Mr. Druker talks about wining and dining and pleasure and everything.

Maybe some were and maybe some weren't. He is not charged with a fraud with regard to flying first class or having super expensive hotel suites. But just don't be misled. This couldn't have been a real hardship going to

Honolulu, Hawaii and San Juan, Puerto Rico and London, England, and Las Vegas, Nevada on all of the conventions and conferences, or Acapulco or Mexico City.

You don't see in any of these claims places like Worchester, Massachusetts or Tupelo, Mississippi or Trenton, New Jersey or Providence, Long Island or nowhere.

Wasn't it a real sacrifice that Mr. Cahn was making?

THE COURT: You have been about twenty minutes. How much longer do you expect to be?

MR. DRUKER: Ten.

THE COURT: All right; equal time.

MR. DRUKER: Now, when Mr. Cahn turned the vicious attack on the credibility of Chief Spahr--I submit, disregarding the characterization as vicious, it was an attack on Chief Spahr's credibility and it was because of the evidence in this case. He testified to A in the Grand Jury, and he testified to B here. He testified to X in the Grand Jury and he testified to Y here. And I will not mention

again his going into that car out in San Francisco.

Now, again, Mr. Cahn says that if I hadn't agreed to Sam Houston's affairs, there would be no effect to Nassau County probably and I wouldn't be here today.

I don't know whether or not there would be an effect to Nassau County. I submit to you, he was double billing in February, September, October and November of 1969. And had he never met Sam Houston--and indeed I submit he never did meet a Sam Houston--he wouldn't have been double billing in 1970, '71, '72, '73 and '74. Why, we don't know. But I submit he was doing it before he met Sam and after he stopped paying this Sam Houston.

And again, with regard to--I think it's Defendant's C, D and H, which Mr. Cahn told you Mr. Druker says these are a fraud repeatedly, I ask again, why aren't the originals here? Why weren't the originals made available to the United States District Attorneys office? He was asked specifically in a letter of December 18th to produce these originals.

And I am reading to you from Exhibit 75, the letter to Mr. Cahn by Assistant U.S. Attorney Thomas Puccio.

Moreover, according to Newsday article, September 12th, 1974, you told reporters that after each of your thirty-six meetings with a certain confidential informant you and Messrs. Spinnato and Spahr each wrote memos and affidavits relating to the payments and monies to the informant. You are further quoted that these memos and affidavits were sent to the United States Attorney yesterday.

This office contrary to the Newsday paper account has not yet received these relevant documents.

You are, therefore, requested to supply the aforesaid memos and affidavits to this office on or before Thursday, December 20th, 1974.

And again, Mr. Cahn's response of December 20th asking for a few more days, and then on December 24th the unfortunate and tragic theft in the Washington, D.C. Airport, and then on the 31st he delivers photocopies to

the U.S. Attorney's Office.

On Michael Fiore, Mr. Cahn reminded you again Mr. Fiore had been paid forty-six or $47,000 by various agencies of the Federal Government. Again, the testimony was here that Mr. Fiore testified in actual trials and I think Mr. Bjorkund said that he heard Mr. Fiore made seizures of heroin for the Federal Government, and furthermore, Mr. Fiore's testimony resulted in the actual conviction of organized crime figures. And I submit to you that may be worth something.

Sam Houston's information resulted in zilch.

Now, with regard to the word "Compensation," Mr. Cahn began talking about that. And I submit, his interpretation of that is just unbelievably strange.

On Exhibit 3 it doesn't say anything about pay or salaries. It talks about transportation, taxes, limousines, hotel transportation, expenses. And the next line, the above information is true and accurate to the best of my knowledge and I am not receiving dual compensation.

And he comes up with this strange interpretation that he were compensation in spite of everything above, it refers to something completely outside the exhibit.

And you will recall Mr. Healy's interpretation is otherwise, and also Mr. Debrowski testified the opinion of the General Council of the LEAA is otherwise.

Now, in Honolulu, I want to read to you something Mr. Cahn didn't mention in his summation.

On cross-examination--and I am on Page A26 to A27. First it refers to the letter dated February 12th, which is now in evidence.

"QUESTION: In that letter Mr. Healy tells you you are going to get a complimentary booking with Wheaton, the travel agency.

"ANSWER: And stay at the Surf Rider.

"QUESTION: You stayed there, didn't you?

"ANSWER: Yes."

And this is critical.

"QUESTION: You were booked there by

Wheaton? 1825

"ANSWER: No.

"QUESTION: You're sure of that?

"ANSWER: Absolutely positive."

Well, there he is, the defendant told you. He got it from the horse's mouth. He wasn't booked at Wheaton. And the only difficulty with that is the witness from the hotel testified Wheaton booked Mr. Cahn's hotel room and the Exhibit itself shows that that is so and the people from Wheaton, Mrs. Joann Bloom, testified that that is so.

Who is trying to fool you on that, ladies and gentlemen?

As to the gambling, I will not rehash that. All I can say is I think--it reminds me of the Shakespearian plays, "Me thinks that he duth protest too much."

It's just a motive the Government offers as a motive why the defendant committed the crimes alleged in the indictment.

Now, Mr. Cahn tells you in summation he is a victim of other people's thefts.

Hy Goldstein relating to Count 3, must have pocketed the $246.86.

MR. WILLIAM CAHN: Your Honor, I never stated that.

THE COURT: No. You said you tried to find it and it's possible he could have gotten a receipt and lost the receipt.

MR. WILLIAM CAHN: I never said---

MR. DRUKER: It went down the sewer.

Mr. Cahn intended every minute to repay it to the County and he just can't get Hy Goldstein in here, he can't locate him.

The Sheraton Surf Rider, he was a victim of someone's larceny, he tells you. He says somebody from the Sheraton Surf Rider pocketed $400 because he paid for Mr. Papademas' room after they gave him this ridiculous Xerox which purports to be a hotel bill.

And Mr. Cahn would have you believe Mr. Theodore and Tolkin are mistaken. He paid them $800 cash a few years ago or, as he suggested, they weren't mistaken and they received the money and didn't put it on their tax returns and they don't want to admit it now.

All these people were either mistaken or running off somewhere with Mr. Cahn's money.

That has about as much credibility as Sam [illegible]son getting $19,750.

Now, in conclusion--and believe it or not, I am at the end of my rebuttal--I just want to ask you again to keep an open mind even at this late stage of the game. Listen to Judge Judd's charge. It's important.

And don't whatever bias or sympathies you might have at this point, either toward or for the defendant, or toward or for the Government, try to disregard it and justify this case on the evidence and on the law as it is to be given to you.

And again, all I say here is that in essence Mr. Cahn 's defense, if it is to be believed--it's a sort of a Robin Hood type thing, that I did in essence fib to these organizations or defraud them of these monies, but I did it for a good purpose, and the end justifies the means.

And I just want to conclude in saying that the end, whether it's for Mr. Cahn or for Jim Druker or anyone else, whether it be prosecutor or anyone else, the end does not

justify the means, particularly when those means are violative of the law, as they are here.

And again I thank you for your patience.

J U D D, U.S.D.J.

(THE COURT CHARGES THE JURY AS FOLLOWS:)

THE COURT: Well, ladies and gentlemen, my charge will be probably less than an hour. So I think I will go right into it.

Counsel, Mr. Cahn and Mr. Gerardi and ladies and gentlemen of the jury:

You have heard the evidence in the case and the arguments of counsel and now you must receive the instructions on the law that governs the case.

You, as jurors, are the sole judges of the facts. You may have noticed that counsel stand when you come into the room after a recess because that recognizes that you are judges of the law--on the facts, just as I am the judge of the law. You have to follow the law as I give it to you in these instructions, and apply it to the facts as you find them from the evidence before you. You are not free to substitute your judgment

of what the law should be or what the law in fact is, and I can't give you any instructions but what I believe are contained in the legal authorities.

Your recollection of the evidence is what governs on the determination of the facts, not what counsel said, neither the Government attorney nor the defendant can add anything to the testimony. If there is any difference, several times the defendant referred to himself as the first person instead of the third person because there are problems when you are pro se. But you are governed by what the testimony is if there is any difference between that and what Mr. Cahn said as counsel pro se.

You have been sworn as jurors to try the case well and truly and render a true verdict. That means you must exclude all bias and all prejudice from your deliberations. Also, you must not permit yourselves to be governed by sympathy or any other considerations not founded in the evidence and those instructions on the law.

The Judge has some discretion when it comes

to sentence if there is a verdict of guilty, 1830
but it is your duty to simply determine the facts whether there is guilt or whether there is reasonable doubt.

The issues to be tried are those made by the indictment and the defendant's plea of not guilty. And you will bear in mind that the indictment is the formal method of accusing a person of a crime. It is not evidence in itself that the defendant committed the crime charged. And the fact that the indictment was found is not any evidence of guilt.

The indictment covers four different sets of charges: The first three, false statements; the four to ten, concealment; eleven to thirty-five, mail fraud; and--eleven to forty-four. And count forty-six is a mail fraud including one extra feature of charging for a free room.

The first count I will read to you because that is typical of the counts--I had it here a minute ago.

See if it's in chambers.

I have a copy of it here.

On or about the 16th day of November, 1974,

within the Eastern District of New York, William Cahn, the defendant, did willfully and knowingly make and cause to be made a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration, herein after referred to as LEAA, an Agency of the United States by stating falsely in an application for reimbursement for $142.73 in airfare expenses filed with the National College of District Attorneys, that he was not receiving any reimbursement from any other source for the aforesaid expenses and that no other funds were available to reimburse him for that expense.

The National District Attorneys Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA.

This is charged as a violation of Section 1001 of Title 18 of the United States Code, which says whoever in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device, a material fact, or makes any false,

fictitious or fraudulant statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulant statement or entry shall be fined or imprisoned.

And I don't go into the matter of the amount of fine or imprisonment because that's something for the Court to determine if there is a verdict of guilty.

We speak of essential elements of the crime so as to divide the Statute into basic parts. And there are four elements of the false statement crime. First that a statement was made, second that it was false, third that the defendant knew it to be false and fourth that it was in--it was a matter within the jurisdiction of the Law Enforcement Assistance Administration.

Now, as to the making of the statement, you saw a claim form that the defendant had signed. He said he didn't read it. If it was submitted over his signature you can find even if he didn't read it that it violated the provisions of the Statute which says it's unlawful to make any use of any false writing.

The question whether the statement is false is a vital and contested matter. The defendant says the statement was not false because there were no other funds available. And it is for you to determine if that statement is true in the light of the fact that the claims submitted to the County recited County business and that money was transferred from the County to the Prosecution Fund on the basis of that claim to satisfy the advance which the defendant had received from the Prosecution Fund.

The third element is that the defendant must know it to be false. And I think the section refers to the indictment--the indictment says he willfully and knowingly caused to make a false statement.

Those two words have been defined, an act is done willfully if it is done voluntarily and intentionally with the specific intent to do something the law forbids, that is, to say with bad purpose, even to disobey or disregard the law.

And an act is done knowingly if it is done voluntarily and intentionally and not because of

1834

mistake or accident or other innocent reason.-

The purpose of adding the word "knowingly" is to insure that no one will be convicted for an act done by mistake or accident or other innocent purpose.

One of the arguments that's been suggested in the summation is that the defendant couldn't know the statement was false if he didn't read the statement. But there is a rule that the opportunity to get knowledge is to some extent the equivalent of knowledge. The law is that one may not willfully and intentionally remain ignorant of a fact that is important and material to his conduct in order to escape the consequences of the law.

Means of knowledge are frequently the equivalent in law to knowledge.

So if it appears from the evidence in the case that a person had information which would lead a reasonable prudent person to make inquiry through which he would surely learn certain facts, then this person may be treated as if he had actual knowledge of these facts, the same as if he had made the inquiry and actually learned

the facts. In other words, the law would charge a person with notice and knowledge of whatever he would have learned upon making such inquiry as it would have been reasonable to expect him to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears a certain condition has existed for a substantial period of time and that the defendant had regular opportunities to observe the condition, then you may draw the inference that he had knowledge of the condition. But it is not a compulsory inference and you need not find that. That's for your determination on all the facts.

The fourth element, that the matter was within the jurisdiction of the Law Enforcement Administration. And the courts have said with respect to that v olation of Section 1003 does not require that the false statement must actually have been submitted to a Department or an Agency of the United States, but rather that it was contemplated that the statement was to be utilized in a manner which was within the jurisdiction of such Department or Agency.

So the submission of a statement to NDAA or the other organization, if they were funded by LEAA may be found to you to be a matter within the jurisdiction of a Government Agency. And it's up to you to determine whether the defendant in the light of all the evidence knew or should have known by reasonable inquiry that the claims that he submitted were for such agencies that were funded under the LEAA. It is not necessary that he know what part of the funds were being used, if it's an organization that had five percent or twenty-five percent of private funds, but only that he know that the meeting he was going to was sponsored by LEAA and that whatever he did with his grant might ultimately be audited by LEAA.

It is not necessary for the Government to prove that the Government suffered--that the agencies suffered any monetary loss. It is sufficient if there has been a false statement.

But in order to find guilt on count one you must be convinced beyond a reasonable doubt of each of these four elements: that the defendant made the statement, that it was false, that he

knew it was false, that it was within the jurisdiction of the LEAA.

Now, on count one there is another factor. There is evidence that after the claims to the National College and to the County were both filed and paid, the money from the National College was repaid to the County. You can still find that the defendant was guilty of a false statement if he filed the statement with the College while he was also intending to file with the County and he repaid the County because he knew of the pending investigation and wanted to clear his skirts.

If he always intended to repay the County, then you can determine that the statements of other funds was not available, was willfully and knowingly false if the County, whatever the defendant intended, was ready to pay the expenses, but the defendant was--decided to put the burden on the College.

There is another rule with respect to the indictment, that dates and the amounts need not be accurate if the proof is approximately as set forth in the indictment and the defendant was

not misled so that he could know the charge that he's facing.

There is an inconsistency in count one in that the indictment says that the claim for reimbursement was filed with the National College of District Attorneys and the final sentence in count one is the National District Attorneys Association was funded by LEAA. And you can determine whether the intention was to use the National College of District Attorneys in both parts of that count on the basis of the documents which I think in both instances do refer to the National College of District Attorneys and not the National District Attorneys Association.

Count two I will read because it's slightly different.

On or about the 16th day of November, 1974, within the Eastern District of New York, William Cahn, the defendant, did willfully and knowingly cause, counsel and induce Joseph Spinnato, an Assistant District Attorney on his staff, to make a false statement in a matter within the jurisdiction of LEAA, an Agency of the United

States, by causing, counseling and inducing Joseph Spinnato to state falsely in an application for reimbursement for $142.73 in airfare expenses filed with the National College of Attorneys--and that should be District Attorneys, presumably--that Joseph Spinnato was not receiving any reimbursement from any other source for the aforesaid expense and no other funds were available to reimburse Joseph Spinnato for that expense.

The National District Attorneys Association--and again apparently a mistake--the National College of District Attorneys, as funded by the LEAA, and thereafter paid the aforesaid claim with funds provided by the LEAA.

Now, that depends on another section of the Code. And I read you the false statement section. And Section 2 of the Code says whoever commits an offense against the United States, and aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

And, therefore, Mr. Cahn is charged with having induced or counseled Mr. Spinnato to file a false claim.

So you have a little different set of elements here. First it must be established that the defendant induced Mr. Spinnato to make a statement that there were no other funds available to make the trip; second, you must find that the statement is false; third, you must find that the defendant knew it was false; and fourth, that it was within the jurisdiction of the LEAA.

And again you can consider the effect of his repayment sometime after the--his repayment to the County sometime after the check came in from the National College.

Count three comes back to the same form as count one, but I will read it to you because there are a couple of other agencies in there.

On or about the 25th day of March, 1974, within the Eastern District of New York, William Cahn, the defendant, did willfully and knowingly make and cause to be made a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration, hereafter referred to as LEAA, an Agency of the United States, by stating falsely in an application for reimbursement for $246.80 in airfare expenses

filed with the National Center for Prosecution Management that he was not receiving dual compensation for the aforesaid expenses. The National Center for Prosecution Management was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA.

And with respect to that claim you must find the same four essential elements I prescribed on count one: First, that the defendant made the statement; second, that it was false; third, that he knew it to be false; and fourth, that it was within the jurisdiction of LEAA.

Now, there has been some discussion of the meaning of the word compensation in the claim form and in the indictment. The defendant's position is that dual compensation can mean only wages, salaries or fringe benefits.

You are to determine what a reasonable person might take to be the meaning of the word in the context with which it is used. You are not bound to accept what the defendant says he understood about it if it is not a reasonable interpretation.

In the dictionary the Government bought for my chambers it says that compensation is some-

thing given or received as an equivalent for services, debt, loss, et cetera. Under that definition compensation could include a reimbursement of expenses.

And one of our great judges said some years ago, a word is not a crystal transparent and unchanged; it is the skin of a living thought and can vary greatly in color and in content depending on the circumstances in the time in which it is used.

So to the extent that the meaning of compensation is important, you can determine what it should have then meant to the defendant if he was acting in accordance with the requirements of the law.

And again, you have here the question whether the defendant repaid the $248, I think it was--$246 to the County.

I think this is the item where Hy Goldstein is said to have been given some cash to take to the County Comptroller and he isn't here and if he brought back a receipt that has not been produced.

If you're satisfied that it was paid, then

you have the right to determine as I said with respect to count one, whether it was repaid because of the pending investigation in order to cover up or whether in any event there was a misrepresentation to the National Center for Prosecution Management that no other funds were available when there were in fact funds available.

Finally or next we come to count four to ten. And there to summarize in one narrative, which I will read.

On or about the following dates within the Eastern District of New York, William Cahn, the defendant, did willfully and knowingly conceal and cause to be concealed material facts in matters within the jurisdiction of the Law Enforcement Assistance Administration, hereafter referred to as LEAA, by submitting to the various LEAA funded organizations listed below, the following claims for travel expenses to be paid out of funds provided to the LEAA. The claims failed to disclose the material fact that William Cahn, the defendant, was also being reimbursed for the aforesaid travel expenses by Nassau County. And this is charged as a

violation of the same section, 1001, which I read in connection with count one.

And then follows a list of organizations and the dates of the crime for counts four to ten; count four being NDAA, counts five and six the Center, counts seven, eight and nine, the Task Force, and count ten, the Arizona Association. And I will give you to take into the jury room a form of verdict which will list these various dates and organizations.

Now going back to the language of the statute, one of the things it says is that whoever knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact--perhaps this is a different clause from the one involved in the first three counts, so the elements are slightly different.

First, there must be a concealment of the fact; and second, it must be a material fact; and third, it must be knowingly and willfully concealed; and fourth, it must be within the jurisdiction of the LEAA.

As to concealment, merely saying nothing is not necessarily concealment. You must consider

the effect of a failure to disclose in connection with the second element of whether it's a material fact.

And in connection with the materiality of the fact that the trip was being paid, was being reimbursed by the County in connection with the claim for County business, even if the National District Attorneys Association could properly pay expenses, you may find that it was material to let that Association know that the defendant was seeking reimbursement also from the County so that the Association could decide whether to pay all the expenses anyway in spite of its by-law or whether to pay part of the expenses or whether to pay none. It might be material not just what the executive director, who testified and who was to some extent dependent upon the directors of the Association would say, but what a Government audit might say if he later reviewed this as to whether this was a material fact. That's for you to consider.

The third element is knowingly and willfully concealed. This would include knowledge that the fact of the reimbursement by the County was

1846

material in consideration of the claim. And it can be knowingly and willfully concealed only if you determine that Mr. Cahn should have known that the NDAA might be interested in knowing whether these funds were also reimbursed by the County.

And the LEAA jurisdiction I have discussed with you already.

Again, each of these four elements must be independently found beyond a reasonable doubt. And the fact that you found one element doesn't mean you infer the existence of the other elements. You must consider them independent.

If the defendant intended to use monies from the agency to pay Sam Houston and believed that this was a way of refunding the amount the County paid for the trip, he may still be guilty for not disclosing the fact of the County reimbursement to the LEAA and you may consider whether this prevents the concealment from being willful, which I said included a bad motive.

And you can consider the claim forms from the LEAA funded organizations in determining the extent in which such disclosure was relevant as

to whether the defendant knew he was required to make a disclosure, what his intent was and what the materiality would have been of the disclosure to LEAA. So it's up to you to find. And you can find it without any specific questions in the form that one who claims reimbursement from two agencies without disclosing that fact is concealing a material fact or whether you determine in your judgment and in your common sense that it's not a material fact.

And you can co nsider as evidence bearing on the defendant's knowledge or lack of knowledge of the falsity of any statement described to him or hisfailure to disclose any information, the fact of the volume of papers and forms that had to be signed by a person with the administrative responsibilities like the defendant, and you may also consider whether he will give the same casual attention to a claim of his own as to a claim submitted by some other county officer and perhaps sign it--approved beforehand by his secretary.

Now, counts eleven through forty-six--and I will read you the introduction to these.

From on or about the 14th day of September, 1969, to the 30th day of November, 1974, both dates being approximate and inclusive, within the Eastern District of New York, William Cahn, the defendant, did devise and intend to devise a scheme to obtain money from the organizations and associations set forth below by the false and fraudulant pretense of sending to them claims for reimbursement of travel expenses and accomodations which the defendant was concurrently causing the County to pay on separate claims submitted by him. It was part of the scheme to obtain money by false pretenses that each of the claims was not a true claim of reimbursement of travel expenses, all of which were paid for by Nassau County. Instead they were devised for obtaining money from the organizations and associations set forth below, which monies William Cahn, the defendant, would be able to and did extend for purposes unrelated to the affairs and activities of the aforesaid organizations and associations.

It was a part of the scheme to obtain money by false pretenses that William Cahn, the defendant did not disclose to the above named organizations

and associations the fact that the aforesaid claims included requests of reimbursement of travel expenses and accomodations identical to those he was presenting concurrently to Nassau County and which were in fact paid by the County.

Four, for the purposes of executing the said scheme on or about the following dates within the Eastern District of New York, William Cahn, the defendant, knowingly caused the claims for reimbursement of travel expenses to be delivered by mail to the organizations and associations set forth below.

Five, for the further purpose of executing the said scheme within the Eastern District of New York and elsewhere, William Cahn, the defendant knowingly caused the organizations and the associations set forth below to deliver by mail to him as addressee on or about the following dates, a check in payment, among other things of the purported payment of reimbursement of travel expenses.

And then there are columns which set forth the count, the itinerary, the date of mailing to the organizations, the date of mailing the check

by the organizations and the alleged duplicated items and amounts. And I don't think it would help much for me to read those now. You have had them described in the testimony and you can check them from the exhibits, if you want to do so.

This count--and by reading all these five paragraphs I don't mean this is evidence. This is the charge. The evidence must be related to the charge.

These counts are pressed under Title--a different statute, Section 1341 of Title 18 of the United States Code, which provide in material parts that whoever, having devised any scheme to defraud or for obtaining money by means of false pretenses, for the purpose of executing such scheme, places in any authorized deposit area for mail any matter to be sent or delivered by the Postal Service or received therefrom any such matter or knowingly causes to be delivered by mail according to the direction thereon any such matter, shall be fined or imprisoned or both.

And I won't tell you the penalty because that's the Judge's discretion and determination

later on. 1851

The language of the Statute is somewhat complex. It covers two very different things. One is to define the kind of misconduct with which the Statute deals, and the other is to define a federal jurisdictional basis for the case, that is, the use of mails in connection with the conduct involved.

What kind of misconduct does this Statute deal with? It deals with schemes to defraud others or to obtain monies by means of false pretenses.

The word "scheme" as used in the Statute or the other counts of the indictment has its common meaning as a plan, that is, a common plan to do something.

Scheme or plan to defraud, which is the expression of the Statute, is a very broad and inclusive expression. It embraces the general idea of a dishonest plan or scheme, the plan or scheme to obtain something to which one is not entitled by deluding another person to turn it over to the planner.

A scheme or plan to obtain money by false

pretenses is itself a scheme or plan to defraud. But the term false pretenses has the specific meaning without requiring that they be used as part of the plan, a pretense of some sort which is not true, is not real, but on the contrary is false or untrue. So the misconduct defined in this Statute is the setting up of a plan or scheme to defraud or obtain money by false pretenses. And that's the critical first part. The second aspect of the Statute requires that in addition to devising the plan, the defendant be shown to have used the mail for the purpose of executing this scheme or plan. This serves two purposes. First it requires proof that the defendant went farther than simply planning, and second, it shows that the defendant took some step toward executing the plan by using the mails.

The use of the mails accounts for these counts being in this Federal Court rather than in the State Court.

So the Statute calls first for proof of the devising of the scheme and second for proof of the using of the mails.

And a couple of other things that I must

draw to your attention before returning to the 1853 specific counts. The first is that the Statute does not require any proof of the scheme actually succeeding. It doesn't require proof that the defendant benefited personally from the scheme or was intending to benefit from it.

The second circumstance is that the purpose for which the scheme to defraud or obtain money by false pretenses, was embarked on cannot be justified--cannot justify.

To put that in extreme form, for a person to form a scheme to defraud by obtaining money by false pretenses for the purpose of building a new church, it is just as much fraud if the money was for some very unworthy cause.

Statute is concerned with whether the money is sought to be obtained by a scheme to defraud or through false pretense. And it's not concerned with the ultimate use to which any fund so obtained may be put.

We were sitting an hour. I don't want to take ten minutes to go back, so suppose we all stand up and stretch.

(Whereupon the Court and jury stand up and

stretch and the following occurred:)

Now, with respect to these counts, eleven to forty-four, there are again four essential elements, although they differ.

First, that the defendant consciously and intentionally schemed to and did present claims for reimbursement for the same travel expenses and accomodations and both to the NDAA and various other agencies and to Nassau County and intentionaly didn't disclose either to NDAA or the other agencies that he was claiming reimbursement for both at the same time.

Second, that he presented the claims for the purpose and with the intention of obtaining reimbursement from both the NDAA and the other agencies and of the County.

Third, that the defendant believed that the NDAA or the other agencies might not have allowed the claim for reimbursement if it had known that the second claim for reimbursement for the same expenses were being presented to the County at the same time.

And I say might not, because I think as with materiality the question goes to what was

a reasonable contemplation. 1855

And fourth, that the defendant in carrying out the plan for obtaining double reimbursement caused his claim for reimbursement to be mailed to NDAA or the other agencies and the check for reimbursement to be mailed to him by NDAA or the other agencies.

If the Government proves all these essential elements of Count 11 or the succeeding counts, then you can convict the defendant on these counts. If the Government fails to prove any one or more of the essential elements beyond a reasonable doubt, you must acquit the defendant. And again, you don't assume the existence of one element from the proof of another.

You have seen that in outlining the essential elements I didn't use the words to defraud or obtain money by false pretenses. Instead, what the essential elements I have just outlined is to tell you what facts must have been found to establish beyond a reasonable doubt in order to authorize the finding that the defendant was guilty of devising a scheme to defraud or obtain money by false pretenses.

This is a criminal charge and not simply a civil claim for the recovery of an overpayment of money. Accordingly there can't be a conviction unless you are able to find and do find from the evidence beyond a reasonable doubt that what was done was done consciously and intentionally for the very purpose of obtaining a double reimbursement of expenses by means of a conscious non-disclosure to NDAA or other organizations that the same plan was simultaneously being presented to Nassau County so that dual payment would result.

The essential elements require also that it be an intrical part of the plan that a claim was sent to NDAA or the other agencies by mail and the check for reimbursements, of course, returned by mail.

And if you find the use of the mails was merely incidental or tangential and not an integral part of any scheme to defraud, then you must acquit.

The Government does not have to show that the defendant himself mailed the letter to the Task Force or accepted the letter containing the

check from the hands of the postman. It is essential only that the Government show that the defendant knew that the claim would be sent off by mail to the NDAA or the other organizations and that in the ordinary course of events the claim, if paid, would be paid by a check that came through the mail.

Let me now repeat to you these essential elements of Counts 11 to 44.

First, that the defendant consciously and intentionally schemed to and did present claims for reimbursement for the same travel expenses and accomodations, both to NDAA or to various other organizations and to Nassau County, and intentionally didn't disclose to NDAA or the other agencies that he was claiming reimbursement from the County at the same time.

Second, that he presented the claims for the purpose and with the intention of obtaining reimbursement both from NDAA and from the County.

Third, that he believed that NDAA or the other agencies might not have allowed the claim for reimbursement if it knew that the second claim for reimbursement was being presented to

the County at the same time.

And fourth, that his claim for reimbursement was mailed or the check was mailed.

The defendant is not charged in this indictment with defrauding the County. And the County claims are only with respect to whether they establish falsity or material concealment or fraudulant failure to disclose in respect to the presentation to the other agencies.

Now, there have been a few matters touched on by the evidence that I think need explanation.

First, the Sam Houston evidence. It is for you to say from the evidence whether you're satisfied that money derived from duplicate claims for the reimbursement for the same travel expenses presented both to the County and to a second organization was in fact used to pay an informer identified as Sam Houston. This is an important part of the defense, but it is not decisive.

The Government says that the District Attorney in person wouldn't spend five years on one informant who produced as little information

as this. But it's hard to second guess as to what an investigative officer might believe to be valuable information. You can determine from all of the facts whether there was a Sam Houston and whether he was an informant and whether he was paid.

If you conclude that there was a Sam Houston and he was paid, then you must further consider whatever money applied to him was given to him, was given with the knowledge and consent of the County and the NDAA and other organizations given at the time the claim for reimbursement was presented for repayment. There would be no scheme to defraud or obtain money by false pretenses if NDAA or other organizations knew at the time the claim was presented that the money they were being asked to pay did not represent reimbursement for travel expenses, but represented money to be paid to an informant. In that situation the paying organization would be consciously bearing the cost of the informer and would not be reimbursing travel expenses.

But if you conclude that at the time when the duplicative claims were presented the outside

organizations didn't know or ascent to the use of the travel expense claim form presented to it as a means of paying a County informer, then it would be immaterial whether the informer existed or in fact got the money. The money would remain money obtained by a false pretense, money obtained by a scheme to defraud.

And the defendant's theory is that what he received from the County was merely an advance, both when he took the check from the Prosecution Fund and when he presented a claim to the County to reimburse the Prosecution Fund, and that he was repaying this advance by giving money to Sam Houston. He says he didn't intend the County bear the expense.

As to NDAA and the other organizations, one question to consider--and I have covered it before--is whether there was an obligation on the defendant to repay the County. If the County was willing to pay the travel expenses, even if nothing was paid to Sam Houston, because the claim listed County purposes, you can still find that failure to disclose reimbursement of travel expenses by Nassau County was part of a scheme to

get NDAA and its similar funds to use for purposes not related to the function of those organizations.

In considering this point you can have in mind the testimony about the defendant's conversation with Comptroller Roncallo. Bear in mind if you accept the evidence as showing Comptroller Roncallo may have known what Mr. Cahn intended to do in billing other expenses or organizations for the same travel expenses and using the proceeds to pay an informer, then you can convict only if you're satisfied from the evidence that there was no disclosure to or ascent by the NDAA or the other organizations to the use of travel expense claims as a means to obtain money to pay a Nassau County informer.

Second, the idea has been presented that if each of the two organizations paid no more than it was willing to pay for the expense of a trip, then neither organization was cheated because each got what they bargained for and there was no scheme to obtain money by false pretenses. That is not the test. The trip may have served two purposes but it involved only one cause of transportation, except in a couple of cases where

Mr. Cahn said there may have been emergencies and he went to Reno twice or Houston twice because of a single meeting of an organization. Both organizations couldn't fairly be asked to pay the transportation cost so that more than one hundred percent of the true transportation cost claimed was collected. One or the other of the organizations was necessarily being charged for transportation costs that had not actually been incurred simply because another organization was paying for it.

If both were liable for the transportation cost, then it could be divided between them on some agreed basis.

Neither the County nor the other organizations bargained on the failure to disclose duplicate claiming or on becoming an unwitting party to paying more than one hundred percent of the transportation cost actually incurred. Third, some of the questioning has suggested that if both County business and the business of the other organization were important enough to justify two trips taken on separate dates, it is not wrong to charge transportation to both

1863

organizations just as if two trips had been made. That proposition is invalid. The ground on which reimbursement of travel or other expense is claimed is that it was in fact disbursed in the amount claimed. To collect twice for an expense that was incurred once is therefore self-evidently wrong. If both organizations were liable for and separately willing to pay the cost, each was nevertheless entitled to be told the facts so that duplicative payments would be avoided and the single expense properly allocated between the two organizations.

There has been evidence that some or all of the guidelines, by-laws, regulations and Statutes referred to do not explicitly forbid or declare illegal the claiming of reimbursement from two organizations for the same expense. And there has been evidence that one or another of the organizations had no articulated policy on the point because the point had never come up or for some other reason.

The law on this matter must not be thought unclear. Deliberately to obtain twofold re-imbursement for an expense incurred only once

1864

can, depending on the circumstances either impermissible taking of money.

Filing duplicate claims for one expense without disclosing the facts to one or both of the persons to whom the claims are presented can in and of itself be fraudulant. It requires no explicit guideline, by-law, regulation, statute or policy formulation to make it so. Indeed, it is more to the point to say that no guideline, by-law, regulation, statute or policy formulation explicitly authorized dual payment for a single expense.

It follows that ignorance of the existence of a by-law or policy on the point where one existed or had been articulated would not of itself excuse one who filed dual claims for reimbursement.

Nevertheless, you must bear in mind the very important third essential element of each of these counts. That essential element requires that the Government show beyond a reasonable doubt that the defendant believed that the Association in question might not have allowed the claim for reimbursement if it had known that

a second claim for reimbursement of the same expense was being presented at the same time.

So if you conclude that the defendant in good faith believed that the National District Attorneys Association or whatever outside Association would have made the travel reimbursement claim even if it had known that a claim for the same travel expenses was also being presented to Nassau County and would be paid by the County, then you must acquit the defendant on those counts on which you make that finding. But you must convict him if you can't make that finding.

And again, the Government must prove each of the essential elements of the crimes charged beyond a reasonable doubt.

I might add this with respect to Sam Houston, whether Sam Houston was a good or bad informant isn't important in this case except as it bears on the question whether you determine whether the defendant actually paid money to Sam Houston and whether that fact negates the bad purpose or willfulness in Counts 4 to 10 or the existence of a scheme to defraud or use

false pretenses under Counts 11 to 44.

I think it was said--and I agree with the statement that was made by counsel--there is no claim made by the Government that the defendant didn't actually go on any of the trips listed on the exhibits. The claim is simply that he charged twice for them without making proper disclosure.

We spoke of intent to defraud. To act with intent to defraud means to act knowingly and with the specific intent to deceive ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.

Now, there is one more count--and we are getting toward the end. Count 46. I don't think I will read it in full.

This relates to Mr. Cahn allegedly obtaining money by false pretenses from t. National District Attorneys Association between April 29, 1974 and May 30, 1974, when he sought reimbursement for $100 in hotel expenses allegedly incurred in Las Vegas, Nevada, whereas in fact the hotel accomodations were provided free, and

causing a claim for reimbursement of $604.91 in travel expenses and $100 in hotel expenses to be delivered to the National District Attorneys Association by mail, and knowingly causing a delivery of a check in payment by mail. And except as it relates to a free room rather than a room that was paid for twice, you have the same elements required--that were required on Counts 11 to 44.

Now I will just have a few words about reasonable doubt. And--well, before I get to that I guess I will talk about the other similar acts.

You can convict the defendant only for the crimes that are charged in the indictment. Even if you find beyond a reasonable doubt that he did something else which is wrong but which he is not charged, you cannot use those as a basis of a charge of a violation of the Section cited in the indictment.

The other acts were offered not to prove bad character, but do bear on the knowledge of the alleged false statements or concealment or on the credibility of the defendant concerning

his testimony on the use of the reimbursement money he received.

There is no fraud on the National District Attorneys Association on these other acts. They bear on the intent and whether the defendant got money on the reimbursement of the County for expenses paid or provided free by other Associations which was more than what he paid to Sam Houston, as the Government contends. And if so, whether that bears on his really making the payments to Sam Houston.

Now, as to proof beyond a reasonable doubt. This does not mean proof to an absolute certainty. Few things in life can be proved that conclusively. It means a doubt based on reason and common sense. It doesn't mean a doubt that you assert in order to avoid an unpleasant task.

What the courts have frequently said is that if after weighing all the evidence you have such a doubt as to cause a prudent person to hesitate before acting in matters of importance to themselves, such a doubt would be a reasonable doubt.

A doubt that would cause you to hesitate to

act in matters of importance to yourself, where you have to reach a decision one way or another.

Proof beyond a reasonable doubt doesn't mean that each bit of the Government's evidence must be proved beyond a reasonable doubt. It applies to the whole case.

In sum total, the Government's evidence must satisfy you beyond a reasonable doubt as to each element of the crime charged or else you must acquit.

Reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden of proof is always on the Government, the defendant has a right to rely on the failure of the Government to prove any essential element of the charge. And the defendant may rely on evidence brought out on his cross-examination of witnesses that were called by the Government.

The law doesn't impose on the defendant the duty or burden of producing any evidence.

A defendant is presumed to be innocent and that presumption accompanies him throughout the trial. It continues, unless you are

satisfied on all the evidence that the Government has proved the defendant's guilt beyond a reasonable doubt.

I am not going to summarize the evidence. You have heard 54 witnesses over a period of almost three weeks, and a full morning of discussion of it.

The evidence is the testimony of these witnesses, the exhibits received in evidence and the facts that are stipulated to in your presence. Statements and argument of counsel and answers that were stricken from the record are not evidence.

We have an interesting situation here in that most of the Government witnesses and many of the Government witnesses who were people who naturally would be sympathetic to the defendant and the Government, therefore, you I can use the rule I will give you that it does not vouch for all the testimony of each witness it puts on. It can ask you to choose and believe some parts and not others.

In your consideration of the evidence you are not limited to the mere word of the witnesses

and the bold facts that have been proved. You can draw inferences that are reasonable inferences from the testimony you have heard and the exhibits that have been introduced.

That bears on the next statement. There are two types of evidence that we have described as lawful evidence. One is direct evidence, like the testimony of an eyewitness. The other is circumstantial evidence. This is the proof of facts and circumstances which logically implies existence or non-existence of some other fact.

And the law generally makes no distinction between direct evidence and circumstantial evidence if all the evidence satisfies both circumstantial and direct, satisfied the standard of proof beyond a reasonable doubt, then you must acquit. If it does not--if it satisfied the required proof beyond a reasonable doubt, you must convict. If it does not, you must acquit.

I spoke of drawing inferences. But, of course, you can't speculate. You can't guess to fill in things that are not in the evidence.

Here we have what is called character evidence, evidence of good reputation for the truthfulness on the part of the defendant. You should consider that along with all the other evidence.

Evidence that a person bore a good reputation for truthfulness before being accused of a crime may in and of itself give rise to a reasonable doubt and warrant an acquittal if you think it improbable that a person who had that kind of reputation would convict such a crime. Of course, no one outside knows the actual character or intent of a person. You have to consider all the evidence. Even though you are satisfied the defendant bore a good reputation for truthfulness, if you are nevertheless satisfied beyond a reasonable doubt on all the evidence, including reputation evidence, that the defendant is guilty, then you bring in a verdict of guilty.

Motives and state of mind of each witness as they appear to you are to be taken into account. You can consider the relation of any witness on either side of the case and the manner

in which the verdict may effect it.

The testimony of the defendant is competent. You have heard that the defendant doesn't have to testify. He has a right to and his testimony should be judged by the same standards as other witnesses. And you may consider that he has perhaps more of a motive to slant the testimony and even to lie than any other witness in the case.

With respect to the witnesses who testified, you can consider how they looked on the witness stand, there candor and accuracy of recollection, whether their testimony has inconsistencies or discrepancies, whether it's intrinsically credible or improbable, or whether it conflicts with other testimony or is inconsistent with other testimony.

When you find a conflict or discrepancy you should determine whether it seems to result from innocent error or falsehood.

If a witness has been mistaken or untruthful in all or any part of the testimony you can give testimony such credit, if any, as you think it deserves.

Evidence that a witness made a statement inconsistent with his testimony at an earlier time may justify you in rejecting the testimony given before you on that point. But it doesn't require you to reject that testimony. You can determine which is true.

Out of court statements made by a defendant may be offered against him as his admission to the facts stated, provided you accept as truth the testimony about the statement.

If you conclude that a witness knowingly testified falsely concerning any material matter, you have a right to distrust that witness' testimony in other particulars, too. You can reject all of the witness' testimony or you can give part of it the credance that you think it deserves.

I have tried not to give any impression to my own view of the evidence. And if I have done so, you should disregard it because you are the sole judges of the facts.

From time to time during the course of the trial objections have been made, rulings on evidence given. Don't draw any inferences from

the comparative frequency of objections on one side or another or their records on having objections sustained.

Where an objection has been sustained, disregard the question and draw no inferences from its wording. When an objection is overruled, the evidence that came in has no special weight just because an unsuccessful objection was made to it.

Finally, a few words about reaching a verdict.

Your verdict must be unanimous. You all have to agree on any count you wish to decide. It's your duty as jurors to consult with one another, to deliberate with a view toward reaching an agreement if you can do so without doing violence to your own conscience. Each of you have to decide the case for yourselves, but only after an impartial consideration of the evidence with your fellow jurors.

While you are deliberating, don't hesitate to re-examine your original views, change your opinion if you believe it's erroneous. Your task is one of conscience, and pride of opinion

has no place in matters of conscience. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

You shouldn't change your vote merely because you are in the minority if you believe that proof beyond a reasonable doubt hasn't been demonstrated or has been demonstrated and others feel differently.

The form of verdict permits you to make a finding on each count, guilty or not guilty. It must be unanimous on each count.

The fact that there are forty-five counts arises from the nature of the case. It does not affect your decision.

You can't resolve any disagreement by compromising and finding the defendant not guilty on some counts and guilty on others. That's not the way to reach a verdict.

As to each and every count you must be in accord with the verdict and not generally in agreement with the resolution of the charges as a whole.

After you have reached your verdict it will be delivered orally in open court by your foreman in response to questions that the Deputy Clerk will provide.

Meanwhile, if you want to look at the Exhibits, you can send in a note to the Marshal who will be outside the door and he will send them to me.

If you think you need to hear some of the testimony on particular points, send out a note and we will try to find it and read it to you.

You are not partisans. You are judges, judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Now, I am going to have to excuse the four alternates. I will have the Marshal sworn in to take care of the rest of you. And meanwhile I just remind you of the oath you took at the beginning that you will well and truly decide this case between the parties according to the evidence and the law as you find it.

Are the Marshals here?

THE CLERK: Yes.

THE COURT: Before he swears the Marshal, let me say also, counsel have a right outside the presence of the jury to complain to anything I have said or asked me to add to anything. And if that takes place, I will call you out again for a few moments. But you can start right in.

(Whereupon the Marshals are sworn.)

THE COURT: This has been a very good jury. In a three week trial I have frequently had to use one or more of the alternates. And I am sorry, your work is done. If somebody breaks a leg, we can't substitute another juror once they have started deliberating.

So will you please take your cards and take your things from the jury room and then report downstairs.

Thank you very much for your patience.

(The alternate jurors leave the courtroom.)

THE COURT: And the other jurors can follow the Marshal.

Thank you very much.

(The jury leaves the courtroom for the purposes of beginning their deliberations at 4:10 P.M.)

THE COURT: Mr. Druker, any exceptions?

MR. DRUKER: I'm sorry, your Honor. What was that?

THE COURT: Do you have any exceptions to the charge?

MR. DRUKER: No, your Honor.

THE COURT: Mr. Cahn?

MR. WILLIAM CAHN: Yes.

MR. NEIL CAHN: Your Honor, to the extent that your Honor did not incorporate those requests that were offered by the defendant, whether in writing or orally, I believe it was yesterday. And with your Honor's permission; and to the extent you varied any of the items contained therein, the defendant excepts and objects.

THE COURT: I will ask your requests be marked as a Court Exhibit so they can be available.

MR. NEIL CAHN: I will incorporate by reference the Court Exhibit, whatever number it will be.

THE CLERK: The Government's is Court Exhibit 1 and the defendant's requests are Court Exhibit 2.

MR. NEIL CAHN: I also have the following additional exceptions and objections.

Number one was your Honor's treatment of the error in Count 1 and 2 referring to the College and NDAA discrepancy, calling upon this petit jury to figure out the intention of the Grand Jury.

Secondly---

THE COURT: I have ruled on that and you have your exception as to that and as to my reviewed denial of it.

MR. NEIL CAHN: This was intended as to the particular way you charged the jury with it.

THE COURT: Yes.

MR. NEIL CAHN: I object to your Honor's defining compensation by use of a dictionary and not defining it as defined by the LEAA and not also defining it as defined by the LEAA. Your Honor only gave a single definition.

THE COURT: No. I mentioned that the defendant had spoken of a definition which he related only to wages, salaries and fringe benefits.

MR. WILLIAM CAHN: Your Honor, but you talked of the general council of LEAA changing a definition that Mr. Debrowski had of compensation. And your failure to give the jury the benefit of Mr. Debrowski's original interpretation of the word "compensation", we take exception to and object.

THE COURT: I think the intent was out of the context and you have an objection.

MR. NEIL CAHN: I object to your Honor's reference when discussing the repayment of money to the County on Count 3. Your Honor said the jury can take into question the fact that he could have repaid it in light of the fact of the pending investigation.

There is no evidence that there was a pending investigation at the time the money was returned to the County.

MR. WILLIAM CAHN: That was in March. The investigation had not yet started, sir.

THE COURT: I will correct that.

MR. DRUKER: That would relate to the other counts?

MR. WILLIAM CAHN: Count 3.

MR. DRUKER: Your Honor's statements hold true with regard to Counts 1 and 2.

THE COURT: Yes.

MR. NEIL CAHN: I believe your Honor made some reference to a Government audit of the NDAA.

THE COURT: LEAA; an audit of the use of the grant.

MR. NEIL CAHN: Okay.

THE COURT: I think that's within the---

MR. NEIL CAHN: Your Honor, I do not believe that the factual question of whether there are in fact--there in fact was a County reimbursement and whether there was in fact a repayment to the County of an advance, specif--ically when discussed with reference to Counts 1 through 10 was left strongly enough to the jury. I think that there was a characterization of what the County did as a reimbursement and that characterization should not have been present.

THE COURT: I think I left that for the jury and I will deny that.

MR. NEIL CAHN: In discussing that mail fraud to build a church, I think your Honor

should have distinguished from building a church and a good motive and what the defendant's theory was in this case. The defendant's theory is Sam Houston is more than a good motive, Sam Houston is a means to repay the County. It's totally distinguishable from building a church. It's not a motive, but it eliminates the fraud itself.

THE COURT: What did Judge Dooling do on that exception? Did you take exception to it? I used his exact words.

MR. WILLIAM CAHN: With all due respect to your Honor, I don't think you did.

THE COURT: I read them.

MR. NEIL CAHN: I was following along with Judge Dooling's charge and on that particular point you were close.

This whole theory, as you are well aware, the defendant was represented by a different counsel. I am not aware of exactly--I don't believe this specific point was raised. And I don't believe that---

THE COURT: I invited comment on any changes the people wanted on Judge Dooling's

charge on the fraud.

MR. WILLIAM CAHN: If I may, your Honor, the comments we tried to make--and this was my last request of you last night--and I make it clear here.

If the defendant believed that only one entity--you said yourself, "Mr. Cahn, the jury might not believe you." And I said that that's perfectly true.

But if the defendant believed that the defendant believed only one entity was paying for the expenses of the trip, then they must acquit.

And this is what your Honor failed to disclose to that jury in any way or with the use of any terms. You're talking that if I paid Sam Houston I would have had to get the permission of NDAA. But if the defendant believed that the payment of NDAA was not to pay Sam Houston, but was to pay the advance of the County and only the NDAA was paying the expense, then I submit, your Honor, the jury has a right to accept that in determining the testimony and should acquit the defendant.

THE COURT: I think I said that--I don't have the exact language. I said your theory was that it was merely an advance from the County both when you took the claim from the Prosecution Fund and when you received the check for reimbursement, and that you were repaying the advance by giving it to Sam Houston.

MR. WILLIAM CAHN: Yes, but I am talking further. You spoke that if the defendant believed he was paying Sam Houston with the funds he would have to obtain NDAA permission.

I submit, your Honor, that's not the theory. I didn't believe I was paying and my testimony indicated that I didn't believe I was using NDAA funds to pay Sam Houston.

I believe that NDAA funds were used to pay the expenses of the trip and I was taking those funds, repaying the advance to the County, and the County was paying Sam Houston.

THE COURT: I will say a word about it.

MR. WILLIAM CAHN: Thank you.

THE COURT: Anything more?

MR. NEIL CAHN: Yes.

Your Honor mentioned that had the defendant

disclosed that the County was paying or could have paid, that he could have bargained with the organizations.

THE COURT: The organizations could have bargained.

MR. NEIL CAHN: I believe I mentioned this in the discussion in the requests to charge. That is not charged in the indictment. What was charged in the indictment is the fact of the reimbursement by both entities, not what could have been done, but he received two reimbursements.

THE COURT: That's what made the scheme fraudulant. That again is Judge Dooling's charge.

MR. DRUKER: I think your Honor mentioned that only in the context of materiality also.

MR. WILLIAM CAHN: That was Judge Dooling's charge when the theory of the Government's case was when I defrauded either the Association or the County. And I submit to you on that very basis that's why the Government reindicted the defendant.

MR. NEIL CAHN: On that regard, what you

are saying the jury can convict on is even in fact if the County did not reimburse at all the jury can find out and convict if the NDAA lost a bargain and that's not charged in this indictment.

THE COURT: The County did reimburse on every count.

MR. WILLIAM CAHN: This is what you're saying: You, Mr. Cahn, I stand in moral judgment of you. You are a sinner. Jury, go out and convict him.

That's what your theory is, sir.

THE COURT: All right.

Anything else, Mr. Neil Cahn?

Really one counsel is enough.

MR. NEIL CAHN: I apologize, your Honor.

In discussing the prior similar acts, your Honor stated that they can be used to attack the credibility, evidence of a prior similar act. I don't believe it's a consistent statement with the Federal Rules of Evidence 608B.

THE COURT: No. He testified that he was giving this money to Sam Houston. The prior similar acts indicate he was doing the same thing

before he had Sam Houston, so it affects his credibility.

MR. NEIL CAHN: I submit it's---

THE COURT: Motion denied.

MR. NEIL CAHN: Exception.

THE COURT: Yes.

THE COURT: Anything else?

MR. NEIL CAHN: I believe that's all the specific exceptions other than the requests.

THE COURT: All right.

Let's bring them in.

(The jury enters the courtroom for further instructions at 4:24 P.M.)

THE COURT: You may be seated.

Mr. Gerardi and ladies and gentlemen, I have a couple of things to add.

First, with respect to Count 3, I repeat what I said with respect to Count 1, that the repayment to the County might have been motivated by a pending investigation. That was a mistake because Count 3 relates to March--a trip in March, 1974, before there was any investigation. So that you consider that fact with respect to payment and the inferences in that respect.

And with respect to the Sam Houston mechanics, the defendant thinks I did not give sufficient counter balancing weight to his argument that he thought he was not using NDAA money to repay--to pay Sam Houston, as the Government argued, but that he was in effect paying--repaying an advance from the County when he took money out of the Sam Houston envelope and gave it to Sam Houston.

I think I have said enough to you about the facts that you have to find in order to establish the important element--the third element, I guess it is, in the mail fraud counts. But I intended to set forth the arguments, both for the defendants and the Government. And I will just refer again to those counts.

First, that the defendant consciously and intentionally schemed and did present claims for reimbursement of the same travel expenses and accomodations both to NDAA and the various other agencies and Nassau County and intentionally did not disclose either to NDAA or other agencies that he was claiming reimbursements from both at the same time.

Second, that the defendant presented the two claims for the purpose and with the intention of obtaining reimbursement from both the NDAA and other agencies and the County.

Third, that the defendant believed that NDAA and the other agencies might not have allowed the claim for reimbursement if it had known that a second claim for reimbursement for the same expense was being presented to the County at about the same time. And fourth, that the defendant in carrying out the plan for double reimbursement caused the claim for reimbursement to be mailed and the check to be mailed.

And in connection with the question whether he believed that it wouldn't have been allowed, you should give consideration to the claim that he did not think he had been paid by Nassau County, he thought he had just gotten an advance which he was repaying--making the payments to Sam Houston.

Now, I don't know just what you would like as a timetable. I said you can get some coffee and snacks this afternoon. I would think as long as you would be locked up overnight, unless you

I N D E X

Summation by Mr. Druker	9
Summation by Mr. William Cahn	72
Rebuttal by Mr. Druker	137
Judge Judd's Charge	163

E X H I B I T S

EXHIBIT	DESCRIPTION	ID.	EV.
G-87	document	9	-
C-1	document	214	-
C-2	request	214	-

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

United States Court
Brooklyn, New York

May 20, 1976
8:00 o'clock p.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
THOMAS SCLAFANI, ESQ.
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

THE COURT: Be seated, please. I have a note from the jury saying, "We would like to adjourn for the night."

I think I will let them go. Bring them in.

THE CLERK: Jury note marked Court's Exhibit 5.

(Whereupon, the jury entered the courtroom at 8:00 o'clock.)

THE COURT: Be seated, just a minute.

I don't need to give you the same instructions tonight. Well, perhaps I do, because you will be allowed outside calls, but they will be monitored by the marshals. I have your note saying you would like to be relieved for the night. I am going to do that. I see you getting down through the first ten counts, and we will see what you can do tomorrow.

When you take the calls from home, don't let anybody talk to you about the case. Just let them know you are still working on it. I hope you will be finished tomorrow. I think it's not really feasible to work on it tonight. The marshals say they will have you here at 9:15 tomorrow.

THE MARSHAL: To enable us to set up a monitoring system. In other words, just make out a note.

THE COURT: I don't think you should try to

discuss the case tonight among yourselves. Wait until you are all back tomorrow morning.

The exhibits will be here for you at 9:15.

I will be here. I have a lot of things tomorrow morning, and I will let the counsel use their own judgment to whether they should be here. I don't expect you will have notes right away. You are not going to have a chance to see newspapers or radios. As a matter of fact, when you get over there and have dinner and finish up and get into your rooms, you will probably be ready for a good night's sleep. I hope it will not be too much of a hardship for you to be away from your families tonight.

Thank you for your work. We will see you tomorrow morning.

(Whereupon, the jury left the courtroom at 8:05 p.m.)

THE COURT: Well, we are all a little later than we anticipated. I will see you in the morning.

MR. DRUKER: Good night, your Honor.

MR. CAHN: Good night.

(Whereupon, the Court was adjourned.)

* * *

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 9 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 21, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

131

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES O. DRUCKER, ESQ.
Assistant U.S. Attorney

WILLIAM CAHN, ESQ.
NEAL CAHN, ESQ.
Attorneys for Defendant

THE CLERK: In the matter of USA versus Cahn.

THE COURT: I have a note saying the jury has reached the verdict. Please bring the jury out.

(Whereupon the jurors enter the court room and are seated in the jury box.)

THE COURT: Good morning, ladies and gentlemen. You can be seated.

I didn't anticipate you would be back here at 8:30, just as I was getting into the court house. I hope you got enough to eat and sleep. I understand you have reached a verdict. Announce it.

THE FOREMAN: Guilty.

THE COURT: On all counts?

THE FOREMAN: Yes.

THE COURT: Mr. Chokis, will you please poll the jury?

THE CLERK: Ladies and gentlemen of the jury, as the Court has received your verdict, you say that you find the defendant guilty as charged on all counts.

Mr. Foreman, is that your verdict?

THE FOREMAN: Right.

(At this point, all other eleven jurors received the same question and all answered in the affirmative.)

(After polling of the jury.)

THE COURT: Well, there were issues of fact to be presented, right of the defendant on appeal. I'm not going to comment on the verdict. I appreciate the time and effort you put in and your faithfulness in everyone leaving his ordinary pursuits in order to see this case through. I think it's fair to say that when you see an item in the newspapers that on 45 counts a defendant faces a verdict of umpteen years, a Court is going to use common sense and this Court does not ordinarily impose consecutive sentences and, of course, I'll hear the defendant at the time of the sentence as to what the determination shall be.

You are now free to talk about the case. You do not have to answer questions that anyone asks. If you are asked any questions you may say what you did or what you thought if you see fit; you should not try to describe the deliberations of the jury or put anyone else on the spot by saying what some other jurors did. Deliberations is not a subject of inquiry and they hsould be kept confidential.

The Clerk will give you back your cards and you could go down to the central jury room. I presume you will be sent home. If you want certificates for your employers, that will be taken care of, and the Clerk will take care of your payment for your service.

Thank you very much.

(Whereupon the jurors were excused.)

THE COURT: Mr. Druker, I presume the Government wants no change in custody arrangements?

MR. DRUKER: That is correct. I don't think the marshalls ever processed Mr. Cahn. I think possibly that should be done; and, secondly, this isn't really the time to go into other trials. I would ask if we could set down a conference date with regard to the other trials, since there is no waiver at the time. I want to protect the government's rights in that regard.

THE COURT: The other trial?

MR. DRUKER: The income tax and perjury trials, there are two other cases still pending, rather than ask for any trial date, if we could put it on for a conference?

THE COURT: Suppose I put a conference for June 3rd at 10 o'clock and there will have to be a pre-sentence report prepared. I don't think there is anything else to say; if either of you want to make motions perhaps you want to reserve them.

MR. CAHN: I make the motion that the verdict be set aside as contrary to law, contrary to the weight of the evidence, and reserve any other motions.

THE COURT: That motion is denied. I think it

was a clear jury issue. So, then, it will be adjourned til June 3rd on theother cases.

MR. DRUKER: Thank you, your Honor.

(Whereupon Court stood in recess on this matter.)

COURT'S EXHIBIT 2--DEFENDANT'S REQUESTS TO CHARGE.

UNITED STATES OF AMERICA v. WILLIAM CAHN 75 GR 645 (S)

PM JUL 8 1976

Counts 1-3 False Stmt.

Defendant's Requests to Charge

A. Counts 1 through 3:

1. The defendant requests that the court charge that each and every one of the following elements must be proven beyond a reasonable doubt and that if any one is not proven, the jury must acquit.

a. That any statement ascribed to the defendant must have been intentionally made and he must have known at the time of the making of the statement that he was making that statement.

b. That the actual statement ascribed to him was at the time it was made, and without reference to any characterization of that statement contained in the indictment, false in fact.

Falsity

c. That at the time the statement ascribed to the defendant was made the defendant knew that statement to be false.

d. That the defendant willfully and intentionally made such a false statement.

e. That the statement was made in a matter within the jurisdiction of the LEAA.

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y. JUL 21 1976

COURT'S EXHIBIT 2

f. That the LEAA required that such a statement be made and that the statement was not made for the purposes of the private entity involved.

g. That the defendant knew that the statement made was required by and would be used by the LEAA.

h. That the statement was material to the LEAA and that the defendant intentionally made such a statement in order to provoke some action by the LEAA.

COURT'S EXHIBIT 2

Count 2

2. With particular reference to Count 2, each of the elements mentioned in "1.", supra, must be appropriately altered to reflect the fact that the statement was ascribed to Mr. Spinnato. Additionally, it must be proven beyond a reasonable doubt that the defendant in fact willfully and knowingly caused Mr. Spinnato to make such a statement.

* 3. With respect to Counts 1 and 2: if you find that the defendant did not intend the County of Nassau to ultimately bear the expenses of the trip, you must acquit.

* 4. With respect to Counts 1 and 2: if you find that the defendant did not intend the County of Nassau to ultimately bear the expenses of the trip and that the defendant believed the County of Nassau would not have borne the expenses, or any part thereof, for a trip wholly or partly for the purposes of the National College, you must acquit.

D's intention to repay - accept

* 5. With respect to Counts 1 through 3: if you find the defendant intended to repay any monies received from the College or Center to the County, you must acquit.

COURT'S EXHIBIT 2

6. With respect to Counts 1 through 3: if you find the defendant repaid (or rather, that the Government has not proved beyond a reasonable doubt that the defendant did not repay) the County of Nassau, or believed that he was doing so, you must acquit.

* Each of requests numbers "3." through "5." should be phrased in the double negative, placing the proof beyond a reasonable doubt upon the Government.

* 7. With respect to Count 3: if the Government fails to prove beyond a reasonable doubt that the defendant knew the words "dual compensation" to include anything other than wages, salaries, and fringe benefits, you must acquit.

* 8. With respect to Counts 1 through 3: if the Government fails to prove beyond a reasonable doubt that the defendant read the claim form on which appears a statement ascribed to him, you must acquit.

COURT'S EXHIBIT 2

9. Any certification or statement contained on a claim form must be strictly construed against the entity which prepared it. If you find any ambiguity in any such certification or statement, you must resolve that ambiguity in favor of the defendant, and you must acquit.

COURT'S EXHIBIT 2

Concealment Counts 4-10

B. Counts 4 through 10:

1. The defendant requests that the Court charge that each and every one of the following elements must be proven beyond a reasonable doubt, and that if any one is not so proven, the jury must acquit.

Reimbursement by County

a. That the defendant's expenses were in fact being reimbursed by the County.

at time Δ requested reimbursement from private entity

b. That the defendant's expenses were reimbursed by the County at the time the defendant requested reimbursement from the private entity involved.

Δ's intent to [illegible] reimbursed

c. That the defendant intended to be ultimately reimbursed by both the County and the private entity involved at the time he made the claim to the private entity.

d. That the defendant intended that the County ultimately bear the expenses of the trip.

Δ knew he was required to disclose

e. That the defendant knew that he was required to disclose the aforementioned facts at the time he made each claim to the private entity.

intention failure to disclose

f. That, knowing he was required to so disclose, he intentionally and purposefully failed to disclose such facts.

w/in juris of LEAA

g. That such claims were within the jurisdiction of the LEAA.

COURT'S EXHIBIT 2

h. That the LEAA required that such disclosures be made and that such disclosure was not solely required by the private entity involved.

i. That the defendant knew that such disclosure was required by the LEAA and thatany non-disclosure would be used by the LEAA.

j. That the concealment or intentional non-disclosure was material to the LEAA.

k. That the defendant intentionally concealed such facts in order to provoke action by the LEAA.

2. You may consider as evidence the fact that the claim forms failed to require such disclosure as relevant to the issues of whether the defendant knew that he was required to make such disclosure, the defendant's intent, the materiality of the disclosure to the LEAA, and whether the LEAA required that such disclosure be made. In other words, you may question the importance of the non-disclosure in light of the fact that the information was not requested.

3. In making the determinations of fact in "1.", supra, you may not consider whether the County could or would

have paid the expenses of the trip, even if the trip was made partly for a County purpose. The only issue in this regard is whether the County did in fact reimburse the defendant and the defendant knew and intended such at the time the claim was made to the private entity. If the Government fails to prove beyond a reasonable doubt that the defendant, at the time he made the claim, did not intend to repay the County, in any manner he believed this could be accomplished, you must acquit. (This request also applies to Count 3.)

4. Silence or non-disclosure is not concealment.

5. There is no duty in law to disclose one's motives or gains. Such a duty arises only where such disclosure is actually called for by one of the parties to the transaction. The Government must prove beyond a reasonable doubt that such information was in fact called for, and that the defendant actually knew it.

COURT'S EXHIBIT 2

C. With respect to Counts 1 through 10:

* 1. You may consider as evidence ~~of~~ the defendant's ~~lack of~~ knowledge of the falsity of any statement ascribed to him, or of a requirement that information in addition to any questions asked on a claim form be supplied, the fact of the volume of forms and papers required to be signed by a person with administrative responsibilities of the defendant, and that the forms, even those supplied by the same organization, were continually changing.

would add reckless disregard

COURT'S EXHIBIT 2

Mail Fraud
Counts 11-46

D. Counts 11 through 46 (presumeably renumbered 45):

1. The defendant requests that the Court charge that each and every one of the following elements must be proven beyond a reasonable doubt, and that if any one is not so proven, the jury must acquit.

County reimbursed

a. That the County, in fact, reimbursed the expenses for the trip.

Knowledge of reimbursement

b. That the defendant knew of such reimbursement.

Δ intended County to ultimately pay

* c. That the defendant intended the County to ultimately bear the expense of the trip.

private entity paid; Δ so intended

d. That the private entity involved also bore the expenses for the trip, and that the defendant intended such.

Δ did not repay County

* e. That the defendant did not in fact repay any advance or other payments for expenses to the County after receiving reimbursement from the private entity.

Δ intended not to repay County

* f. That the defendant knew and intended not to make any such repayments to the County in any manner the defendant believed this could be accomplished.

g. That the defendant intentionally billed both the County and the private entity for the expenses of his trip, and intended to retain the payments from both the County and the private entity.

COURT'S EXHIBIT 2

knowledge of private entity's policy

h. That the defendant knew that such retention was prohibited by the private entity. Whether the County would prohibit such retention is not in issue. The defendant is not charged with defrauding the County in any way.

intentionally double billed

i. That the defendant, despite such knowledge, intentionally billed both the County and the private entity, intending to retain both payments.

Δ actual knowledge of prohibition

* j. That the defendant actually knew of the prohibition against retaining both payments, and not simply that the defendant should have known of the prohibition. In other words, you must find that the defendant actually knew that he was doing something wrong with respect to the private entity.

use of mails integrally related

* k. That in order to accomplish something the defendant actually knew to be wrong, the defendant made use of the mails and that the use of the mails was integrally related and essential to the defendant's wrongful plan.

COURT'S EXHIBIT 2

2. With respect to Counts 11 through 46:

a. You may take into account as to the defendant's knowledge, the fact that no statute prohibits the retention of two payments for the same expense from two sources, where both sources have agreed to pay the expense. In fact, in some instances, an individual has a legally enforceable right to collect his expenses from two sources.

b. If any reference is made to the fact that "double billing" can under certain circumstances be illegal, the defendant asks the Court to also note that "double billing" can be legal, and that it is only where each of the abovementioned elements is proved beyond a reasonable doubt, that it is illegal.

c. If the government fails to prove beyond a reasonable doubt that the defendant did not intend the private entity to bear the ultimate expense of the trip, you must acquit. In other words, if you find that the defendant may have intended the County not to ultimately pay for the trip, you must acquit. In making this determination, you may not consider whether the County could or would have paid the expenses of the trip, even if the trip was made partly for a County purpose. The only issue in this regard is whether both the County and the private entity paid the expenses, and that the defendant retained both payments,

and that the defendant actually knew this was wrong.

d. With respect to Sam Houston, the Government must prove beyond a reasonable doubt that Sam Houston was not an informant, or that the defendant did not intend to repay the County by means of paying Sam Houston. You may not consider whether Sam Houston was a good or bad informant, or whether his information was valuable or not. If you find that Sam Houston may have been an informant, and that the defendant may have intended to repay the County by means of paying Sam Houston, you must acquit.

e. If you find that the defendant may have acted in good faith and without a specific intent to defraud the private entity, you must acquit. The Government must prove beyond a reasonable doubt that the defendant intended to defraud the private entity and did not act in good faith.

f. The defendant asks the Court to inform the jury that there is no claim by the Government that the defendant did not actually go on these trips or actually incur the expenses the defendant says he incurred.

g. The defendant asks the Court to note that the Government concedes that the defendant could have retained his per diem payments from the private entities, and asks that the Court specifically charge that the defendant's treatment of his

COURT'S EXHIBIT 2

per diem allowance as similar to the other expenses he received, may be considered evidence of the defendant's good faith.

h. To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of wither causing some financial loss to another, or bringing about some financial gain to oneself.

i. To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.

j. An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

k. An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

l. The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

m. You may only convict the defendant for the crimes charged in the indictment. Even if you believe, beyond a reasonable doubt, that the defendant may have done something wrong with which he is not charged, you may not convict.

COURT'S EXHIBIT 2

n. All of you must agree that the defendant should be convicted or acquitted on each count. You may not, in any way, resolve any disagreement by compromising by finding the defendant not guilty of some counts and guilty or others. As to each and every count, each of you must be in accord with the verdict and not generally in agreement with the resolution of the charges as a whole.

o. The burden of proof beyond a reasonable doubt of each and every element of every count is on the Government. The defendant need not prove anything. If you find that even one element of a count has not been proven beyond a reasonable doubt, you must acquit, regardless of the proof as to any other element of the count. The defendant need not prove his defense or his innocence or his honesty.

* Requests "j." through "o." apply also to Counts 1 through 10.

* p. Proof beyond a reasonable doubt of a LEAA regulation, or policy of any private entity which would prohibit the retention of two payments for the same expense is not, alone, sufficient to convict. You must also find beyond a reasonable doubt that such a regulation or policy was actually communicated to the defendant, and that at the time of making each claim he actually knew of such a regulation or policy.

COURT'S EXHIBIT 2

q. The fact that the defendant may have failed to disclose certain information, does not itself constitute either concealment or knowledge that he was required to disclose such information, or that the facts disclosed would have been prohibited, or that the defendant knew such to be prohibited. (This request also applies to Counts 4 through 10.)

r. If you find that the use of the mails may have been incidental or tangential and may not have been an integral part of any plan, you must acquit.

s. Evidence of the defendant s good character or truthfulness, alone, can be sufficient, in and of itself, to create a reasonable doubt of guilt.

t. There is no implied promise, representation, or pretense in the law that one seeking reimbursement from one entity cannot or is not seeking reimbursement or getting reimbursement from another entity. Such a promise, representation, or pretense can only be established through the actual dealings of the parties, and there is no burden upon any one party to make known his intentions. The defendant was under no duty to communicate his intentions unless specifically requested to do so, or unless he actually knew that his intentions were prohibited. In that regard, it can be noted that there is no claim that the defendant misrepresented in any way any information specifically

COURT'S EXHIBIT 2

requested of him.

u. The defendant is not charged with knowledge of the existence of any policy or regulation, or interpretation thereof, testified to in this court unless such policy, regulation, or interpretation was actually communicated to the defendant and the defendant actually knew of such policy, regulation, or interpretation at the time of the acts he is charged with.

v. If you find that the private entity may not have been defrauded, you must acquit.

w. If you find that the private entity may have gotten and paid for what it bargained for, you must acquit.

x. An evil or bad intent is not alone enough to convict. You must find, beyond a reasonable doubt, that the private entity was defrauded and that each of the abovementioned elements has been proven.

y. If you find that the defendant may not have intended some harm or injury to the private entity, you must acquit.

z. If you find that the defendant actually knew of some policy which prohibited receiving and retaining two payments for a single expense, you must also find that such a policy was actually enforced, and that the defendant knew it would be enforced.

COURT'S EXHIBIT 2

Count 46

3. With respect to Paragraph 5 of Count 46:

a. If you find that the defendant (may have) believed that he was entitled to receive payment whether or not an expense was actually incurred, you must acquit. In that regard, you may consider as evidence the defendant's testimony that he believed such payments to be in the nature of a per diem allowance: the defendant's recognition that he did make such a claim; the defendant's testimony that he made inquiry concerning such a payment; Mr. Healy's testimony that such an inquiry was, in fact, possibly made; and the fact that such a claim for hotel expenses was not made to the County, which did not operate on a per diem allowance basis.

COURT'S EXHIBIT 2

E. Additional general charges:

* 1. If the Court charges the jury with respect to prior similar acts, the defendant requests that the Court charge that the same rules apply as to similar acts which demonstrate the defendant's lack of intent, etc., with respect to the acts with which the defendant is charged.

2. You shall not change your vote merely because you are in the minority if you believe that proof beyond a reasonable doubt has not been demonstrated as to any element of the count being discussed.

Respectfully submitted,

WILLIAM CAHN
Attorney for Defendant
Office and P.O. Address:
278 Old Country Road
Mineola, New York 11501
Telephone: (516) 747-7616

NOTICE OF MOTION TO SET ASIDE VERDICT OR FOR A NEW TRIAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA,

-against-

75-CR-645 (S)

WILLIAM CAHN,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUN 25 1976
TIME A.M.....
P.M.....

- -x

SIRS:

PLEASE TAKE NOTICE that WILLIAM CAHN, the undersigned, shall move this court at a date and time designated by the court, for the following relief:

1. For the dismissal of Indictment 75-CR-645 (S) on the grounds that the indictment was returned in violation of the defendant's due process rights;

2. For a judgment of acquittal pursuant to F.R.Cr.P. 29 on the grounds that the verdict was against the weight of the evidence;

3. For a new trial, pursuant to F.R.Cr.P. 33 in the interests of justice.

Dated:

Yours, etc.,

WILLIAM CAHN
Attorney for Defendant
278 Old Country Road
Mineola, N.Y., 11501
(516-747-7616)

TO: JAMES O. DRUKER
Assistant U.S. Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y., 11201

117

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT AND OTHER REQUESTED RELIEF.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

-against- 75-CR-645 (S)

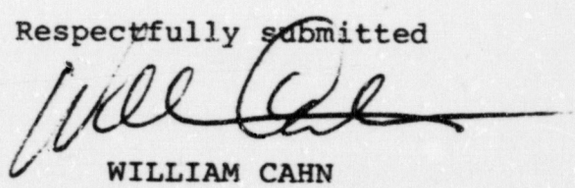
WILLIAM CAHN,

Defendant.

- -x

DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION
TO DISMISS THE INDICTMENT
AND OTHER REQUESTED RELIEF

Respectfully submitted



WILLIAM CAHN
Defendant Pro Se

NEIL R. CAHN

(of counsel)

DEFENDANT'S MEMORANDUM

PRELIMINARY STATEMENT

On May 21, 1976, a Petit Jury returned a verdict finding the defendant guilty of the 45 remaining counts of Indictment 75-CR-645(S).

By this motion the defendant asks the court to dismiss the indictment on the grounds that it violates the defendants Fifth Amendment right. The basis of this motion is that under the circumstances of this case, a presumption of prosecutorial vindictiveness must arise which contravenes defendant's constitutional rights. While the substance of this motion may have been tangentially discussed in pre-trial motions to dismiss, the defendant asks this court to consider this motion, in the interests of justice, at this time, in light of the cases presented herein which have subsequently come to the defendant's attention.

Alternatively, defendant asks this court for a judgment of acquittal on the grounds that the clear weight of the evidence not only establishes a reasonable doubt as to defendant's guilt, but establishes his innocence.

Finally, defendant asks this court to set aside the verdict and order a new trial on the grounds specified in Point III of this memorandum.

DEFENDANT'S MEMORANDUM

POINT

THE SUPERSEDING INDICTMENT IS VIOLATIVE OF DEFENDANT'S DUE PROCESS RIGHTS.

In his pretrial motion to dismiss the indictment, defendant principally argued that the superseding indictment violated the defendant's rights to be protected from being twice placed in jeopardy. It was tangentially noted that the fundamental unfairness of the government's action violated the defendant's due process rights.

Subsequent to the trial a body of case law has come to the defendant's attention, which indicates that the government's action in this case raised a presumption of prosecutorial retaliation and vindictiveness which necessitates the dismissal of the indictment.

Under a line of cases which began in 1969 with the Supreme Court decision in North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed. 2d 656. In Pearce the court held that a defendant who successfully attacked his first conviction could not receive a more severe sentence after conviction following a retrial without an affirmative demonstration of legally sufficient reasons for the harsher sentence. It was held that any increase in punishment under circumstances which might give the appearance of vindictiveness or retaliation in response to a defendant exercizing his rights would be presumed to contravene a defendant's

due process rights. That presumption could be rebutted only upon an affirmative showing of objected reasons for the increase in sentence.

In Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974), the Supreme Court held that such considerations would also apply in circumstances involving a realistic likelihood of vindictiveness on the part of the prosecutor. The court held that it was constitutionally impermissible for the prosecutor to increase the charges following the exercise by a defendant of his rights.

Prior to Blackledge, this principal was recognized in United States v. Gerard, 491 F.2d 1300 (9th Cir. 1974). In that case the defendant was allowed to withdraw a plea of guilty. Following the vacation of the plea the government added a different charge, the substance of which was known to the government at the time the defendant was first charged. The defendant was thereafter convicted. On review, the Court of Appeals dismissed the added count. The Court noted:

> "(W)e do not propose to try to (distinguish the prosecutor's action here from Pearce) simply to permit the imposition of what can be no more than a concurrent sentence on a count the government did not think worth bringing in the first place." 491 F.2d at 1306, 1307.

It was of no import to the court that the defendant might not have received a harsher sentence as a result of adding the new count. What was of moment was that following the exercise of his

rights, the defendant was charged with an additional violation of Federal Law of which the government was at all times aware. As was noted by the Second Circuit Court of Appeals in United States, ex rel. Williams v. Mc Mann,436 F2d 103, 105 (1970), cert. denied, 402 U.S. 914, "We have no quarrel with the proposition that prosecutorial vindictiveness can be no less an affront to those values we characterize as 'due process' than judicial vindictiveness."

In United States v. Jamison, 505 F2d 407 (D.C. Cir. 1974) it was held that the rule that the prosecutor cannot "up the ante" would prohibit increasing the charges following a mistrial, even where that mistrial was not occasioned by any act of the prosecutor. In that case, the defendant was first charged with second degree murder. At the trial, defense counsel made an error which occasioned the trial court granting a mistrial. The defendant was subsequently reindicted for first degree murder. The court states:

> "The fact that in a particular case the actual impact on the defendant of a charge increase is slight is, of course, not determinative, any more than the fact that a prosecutor may not in fact have acted out of vindictiveness, for the evil to which Pearce is directed is the apprehension on the defendant's part of receiving a vindictively-imposed penalty for the assertion of rights. Moreover, we would hesitate to distinguish Pearce even in a case where the only possible prejudicial effect of the charge increase was minimal. The difficulty of drawing the line between those charge increases which do and do not carry sufficient potential impact to require restrictions of the kind imposed in Pearce persuades us that all charge increases should in this respect be treated alike." 505 F2d at 415 (emphasis in original).

The court held the reasons for an increase in charges, as well as the factual basis for such reasons, must be made a part of the record at the time the superseding indictment is filed.

Here, the defendant was charged with some 29 additional violations of 18 U.S.C. 1341 following the mistrial declared because the jury was not convinced of the defendant's guilt on the 7 mail fraud counts which that jury had before it. Additionally, the defendant was indicted on 10 false statement counts. One such count was present in the original indictment and was dismissed by Judge Dooling. The government filed an appeal from that dismissal and withdrew it, prior to obtaining the superseding indictment.

The government has admitted in open court that it had knowledge of each and every violation charged in the superseding indictment at the time the original indictment was returned. At the first trial the defendant offered as his defense evidence of Sam Houston. The government stated that because the defendant availed himself of this defense it decided to increase the charges against the defendant. (It should be noted that it was the government who first introduced the subject of Sam Houston at the first trial.)

It is submitted that the right to offer evidence in defense of one's conduct is perhaps the most fundamental right granted by our institution. The defendant exercised this right at the first trial. Because he did, the government added 39 counts.

DEFENDANT'S MEMORANDUM

Although there is no burden on the defendant to establish vindictiveness or retaliatory motivation, it is submitted that such is established by these facts. A defendant cannot be victimized because the evidence which he introduced is not the evidence which the prosecutor wishes to hear or because the trial does not go according to the prosecutor's strategy. In United States v. Johnson, (4th Cir. 3/31/76)* it was held that even where the record did not demonstrate prosecutorial malice, an increase in charges following the defendant's exercise of his rights would not be tolerated. The government argued that it increased the charges simply to create a stronger case for the government. The government sought to distinguish Pearce, Blackledge and Jamison on the grounds that in each of those cases the prosecutor knew of the charges at the time the original charge was made. That argument was not only rejected by the court but unavailable to the government in this case.

In United States v. Ruesga-Martinez (9th Cir. 4/22/76)** the defendant, originally charged with a misdemeanor, was charged with a felony after refusing to sign a form waiving a jury trial. The court held that this gave the impermissible appearance of

* This decision was reported in brief at 19 Cir.L.2043, a copy of which is annexed hereto. The full opinion has not been published. It has been ordered directly from the Court of Appeals and will be supplied to the court when received.

** A copy of which is annexed hereto.

vindictiveness and thus the indictment was required to be dismissed. The court indicated that the burden placed on the government is to clearly demonstrate not only why the increased charge was sought but why it was not originally charged. Here, there has been no clear demonstration of a legally sufficient justification for the increased charges.

In United States v. DeMarco, 401 F.Sup. 505 (C.D.Cal.1975) the only increase in the charges was the addition of another violation of 18 U.S.C. 1001, a crime with which the defendant was already charged. In this case, we not only have 29 additional mail fraud counts but 10 false statement counts. In DeMarco, the government argued that it intended to drop the first false statement charge and that this "substitution" of charges did not constitute "upping the ante". The court held that the government had increased the charges sufficiently to call for dismissal. The court indicated that any change in the charges which would increase the likelihood of conviction, the punishment, or otherwise place any greater burdens upon the defendant, would not be tolerated unless adequately excused. The Court stated:

> "Nor is it clear that the 'substitution' of the new 18 U.S.C. 1001 charge does not place a greater burden on the defendant. The prosecution has made no secret of its belief that the new 18 U.S.C. 1001 charge is a strong charge. The 'substitution' of charges is made precisely because the government believes that the chances for conviction are increased and because it believes that the substitution subjects the defendant 'to a significantly increased potential period of incarceration.' Blackledge v. Perry, supra, at 28, 94 S.Ct. at 2103." 401 F.Sup. at 512.

DEFENDANT'S MEMORANDUM

It is submitted that the superseding indictment, itself, has prejudiced the defendant. By way of illustration, the defendant's retainer agreement with his former attorney did not cover the new charges. After the return of the superseding indictment, the defendant's former counsel rightfully asked for an increase in legal fees which defendant was in no position to pay. Second, the presence of 45 counts may very well have had a cumulative effect with the jury. The total amount of monies which was the subject of the second indictment far exceeded the amount of money with which the jury in the first trial was concerned. Third, because of the additional charges, particularly count 46, certain evidence which was held inadmissible at the first trial was admitted at the second trial. (e.g. alleged prior similar acts.)

Indeed, the inherent unfairness of the superseding indictment was recognized by Judge Dooling in his memorandum to Chief Judge Mishler and circulated to all judges of this district, dated March 23, 1976, a copy of which is attached. As Judge Dooling stated, "The rulings on evidence and on substantive principle made during the trial and the pre-trials and on the motions made during trial, and the view taken of the major bodies of evidence in framing the charge, seen in relation to the superseding indictment, signify to me that it would be undesirable for me to be the judge on the superseding indictment, and I am unwilling to essay it."

Here, defendant would have been far better off had he been convicted under the original indictment. Because he attempted to defend himself against the original charges, and was to some extent successful, he has been penalized. The government clearly used the first trial as a training ground. After learning of the rulings of Judge Dooling, and after having an opportunity to speak with the jurors, the government reshaped and increased the charges against the defendant. Such has certainly prejudiced the defendant.

The cases have held that the defendant need not show any injury at all. The courts have held that charging a defendant with additional violations of a statute previously charged, following an exercise by the defendant of any right, will not be tolerated in the absence of a justifiable excuse. The government has not only not offered such an excuse, but to the contrary, actual vindictiveness, retaliation and malice can be shown. The political background of this prosecution (see Point III (5), infra.), alone, should be a sufficient basis on which to establish impropriety. Further, it should be noted that the superseding indictment was returned after the commencement of the defendant's civil suit for damages based upon the prosecutor's violation of his civil rights. The indictment should be dismissed.

DEFENDANT'S MEMORANDUM

POINT II

THE VERDICT IS AGAINST THE WEIGHT OF THE EVIDENCE.

It is submitted that in order for the defendant to have been found guilty, the jury must have believed that 7 witnesses committed perjury: The defendant, Chief Spahr, Mr. Spinnato, Mrs. Maston, Detective-Sergeant Lang, Mr. Roncallo and Mr. Middleton. Additionally, the jury must have found the documentary evidence offered by the defendant to be worthy of no belief. It is submitted that this court must carefully examine the evidence as a whole where the jury totally disregards such a quantum of evidence from such a variety of sources.

The government in an attempt to discredit the Sam Houston evidence used a scatter gun approach. The government claimed that either Sam Houston did not exist or that he was not an informant. To show the latter, the government tried to show that Sam Houston was "the man behind the blackjack table". The government introduced evidence, through Mr. Pappademas that on one occasion in 1974 more than 3 years after the commencement of the "dual payments", the defendant was observed in a Las Vegas gambling casino in an agitated state with a large sum of money in his hand. From this the jury was to infer that for the 4 years in question the defendant lost heavily in gambling and from that inference the jury was to infer that the defendant used the dual payments to pay

his gambling debts. It was to be inferred from certain checks cashed in Las Vegas,in Reno, that the monies therefrom were used for gambling; from that inference was to be inferred that the defendant lost; and from that inference it was to be inferred that the defendant used the dual payments to pay such losses.

The defendant showed that each and every time a check was cashed immediately upon return from the trip he was on, monies were returned to his account. The government offered no evidence of any gambling debt or that the defendant had ever asked for credit. It was never indicated by the government where Sam Houston fit into this gambling picture. It should be remembered that Mr. Middleton testified as to seeing Sam Houston in San Francisco, California.

The government attacked the affidavits and history of case sheet as recent written fabrication. Such an attack does not explain away the testimony of Mr. Roncallo who testified to a discussion with the defendant about methods of paying an informant without using the county vouchering system some 4 years prior to the time at which the government claimed these exhibits were compiled, and some 2 years following the to-from report of Chief Spahr. The government based its attack on inferences from 2 types of evidence. First was the testimony of Mr. Devine that Mrs. Maston, Mr. Spinnato, and Chief Spahr were working in defendant's office one weekend in September, 1974. The defendant may also have been present for some

of the time. While Mr. Devine conceded that it was not unusual for these individuals to be working together on weekends, it is to be inferred that on this particular weekend, all the various files on organized crime and all the newspaper clippings collected over the years were gathered together and the Chief Assistant District Attorney and the Deputy Chief Inspector of the Nassau County Police Department "threw the defendant a bone," by committing perjury via their affidavits. Mr. Devine testified that he had absolutely no idea what was going on in that room.

It was to be inferred from the fact that a minority of the pieces of information listed in the history of case sheet were discussed in newspaper articles or District Attorney's files prior to the time at which the defendant and other witnesses testified they were received from Sam Houston, that on that fateful weekend in September, Sam Houston was created from those articles and files. The government may not wish to credit the defendant and his bone throwers with enough intelligence to have stated that the information was received from Sam Houston prior to the date of the newspaper article from which the information was taken. However, such would not explain the majority of items on the history of case sheet which were not so attacked.

Sergeant Lang committed perjury, it was theorized, because when shown what was later learned by defendant to be his tax returns (query: Under what legal authority were those tax

returns obtained?) he admitted that between 1969 and the years following, his earnings almost doubled, not withstanding that in the interim he was promoted and received his annual raises and notwithstanding his testimony that he waived his overtime pay for the trips on which he accompanied the defendant.

Mr. Roncallo was not impeached. Mr. Middleton was not impeached. Mrs. Maston assumedly committed perjury out of loyalty to her boss.

Lastly, it should be remembered that the irrefutable evidence was that if the defendant desired extra money all that he needed to do was submit to the county a claim for informant fees without any detailed explanation.

The defendant realizes that reasonable inferences must be viewed in a light most favorable to the government on a motion such as this. However, it is submitted, that there comes a point at which those inferences no longer become reasonable but become speculation and mere speculation cannot be the basis to declare 7 highly respected witnesses to be perjurors and to deprive a man of his liberty. The verdict should be set aside and a judgment of acquittal should be entered.

DEFENDANT'S MEMORANDUM

POINT III

IN THE INTERESTS OF JUSTICE, A NEW TRIAL SHOULD BE ORDERED.

The defendant, by this motion, does not seek to burden the court with a re-hashing of arguments raised prior to and during the trial. However, it is submitted that certain rulings by Your Honor, in light of the trial as a whole, required the granting of a new trial.

The items specified below should not be taken to be a waiver of the other arguments and objections made prior to and during the trial. Rather, it is believed that this court, upon reflection, will see that each of the below mentioned mid-trial rulings were erroneous and that in the interests of justice a new trial should be ordered.

1. A substantial amount of time and testimony concerned certain allegedly similar acts. This evidence was admitted on the basis of that part of Count 46 which charged the defendant with having received $100. from the National District Attorneys Association for hotel accommodations which were in fact complimentary. It should be noted that these acts were not declared similar or admissible by Judge Dooling on the trial of the original indictment. That indictment did not contain a count which specified the misconduct charged in part of Count 46.

First, in light of Point I, supra, it is contended that

count 46 should not have been permitted to stand. Second, the circumstances under which these prior similar acts may have been admissible, were not present. Evidence of these acts was admitted, it is assumed, to show that the defendant received monies to which he was not entitled because he had complimentary accommodations. Further, these acts may have been offered to show that such a billing by the defendant was not a mistake.

However, it was the testimony of Mr. Healy that it was the policy of the National District Attorneys Association to give an allowance for accommodations whether or not any monies were actually spent. In fact, he referred to it as a per diem. Therefore, the defendant was entitled to receive the monies in issue. (See testimony 5/4/76, p. 43 et. seq.) Second, there was no dispute that this billing was anything other than willful, with knowledge that the hotel room was complimentary. No mistake, inadvertence, etc., was claimed. Therefore, without relevance to any disputed issue in the case, the prior similar acts were admitted.

Each of the prior similar acts was the subject of much controversy and testimony. With respect to the Hawaii trip, the defendant claimed that he checked out in the morning, paid his hotel bill in cash, was given a copy of the bill and submitted it to the county on March 31, 1971. It is undisputed that the bill submitted to the county was that of Mr. Pappademas. The hotel

representative testified that no one checked out of the defendant's room but that the records revealed that someone did check out of Mr. Pappademas' room at 8:52 A.M. Mr. Pappademas testified that he did not check out with the cashier, but that he did leave his key at the desk some time after 12 o'clock. The questions still remain that if the defendant's testimony is false, how does the government explain that the defendant was given a copy of the Pappademas bill before the hotel records indicate a copy was given to anyone, and who checked out of the Pappademas room that morning.

The Puerto Rican trip results in similar confusion. The hotel representative produced by the government indicated that the hotel records showed that the defendant's room was complimentary and that the defendant, therefore, could have no legitimate reason for billing the county. The general manager of the hotel at the time, however, remembered the controversy about this bill and stated that the bill, as it stood on the day of checkout, indicated that it was required to be paid. This testimony was corroborated by Mr. Munoz, another hotel official at that time.

Lastly, tremendous controversy arose out of the testimony concerning the England trip. The number and import of the inconsistencies between the testimony of Mr. Theodore and Mr. Tolkin concerning the trip and the check are of great magnitude. The defendant will not burden the court with a detailed analysis. However, it is important to note that these witnesses corroborated

that the defendant claimed he had previously paid for the trip whether characterized as a "debt" or the ludicrous "estimated loss of profit". Mr. Tolkin admitted being concerned about an entry in his books which, according to his interpretation, should have been of no concern. The controversy concerning each of these allegedly similar acts, particularly in light of the fact that they bore no relation to any disputed issue, bespeaks an inadmissibility. Undoubtedly, the evidence had a highly prejudicial impact. Defendant asks this court to now recognize that this evidence should not have been admitted and, therefore, to order a new trial.

2. The court was correct in recognizing that in this Circuit evidence can be based on an inference. This rule was announced in Your Honor's opinion in United States v. Eustace, 423 F.2d 569, 571 (2d Cir. 1970). However, as was noted by the Second Circuit in United States v. Ravich, 421 F.2d 1196, 1204 n. 10 (1970), "the length of the chain of inferences necessary to connect the evidence with the ultimate fact to be proved necessarily lessens the probative value of the evidence, and may, therefore, render it most susceptible to exclusion as unduly confusing prejudicial or time consuming, . . ." It is submitted that the double and triple inferences relied upon by the government to indicate that the dual payments were used for gambling debts should not have been admitted in light of the fact that such was the sole evidence of that contention and that it therefore had no probative value whatsoever.

Indeed, such evidence was no longer inference but sheer speculation and because of its highly prejudicial nature should not have been admitted. A new trial should be granted.

3. Defendant was charged with having defrauded his victims by not disclosing his claims to the county. If the victims would have paid the defendant, had he made such a disclosure, there could be no fraud. The first representative of a victim to testify was Mr. Healy of the National District Attorneys Association. Had the defendant chosen to make such a disclosure, it would have been to Mr. Healy. Nevertheless, this court refused to allow the question to be posed to Mr. Healy of what Mr. Healy would have done had he had knowledge of the fact that the County of Nassau was being billed for the same expenses. (See testimony 5/4/76 at 73) While this hypothetical question was not to be borne out by the evidence, it is submitted that it should have been allowed to show the lack of materiality of the non-disclosure and the good faith of the defendant. If Mr. Healy would have paid the claim in any event (and his testimony at the first trial, where this question was allowed, was that he would have,) the fraud as charged could not have been established.

The defendant should have been allowed to pursue a line of inquiry which might have demonstrated as to every victim that had he disclosed the facts which the government charged he fraudulently concealed, he would have been paid. While such payment may have violated a policy of the victim, whether oral or written, whether

communicated to the defendant or not, it is not criminal for an entity to voluntarily choose to determine to make an exception to its policy, change its policy, or find that in the particular instance, the policy would not be violated. This entire avenue of inquiry was foreclosed by the court. It is submitted that the defendant should have been allowed to elicit from the witnesses that the non-disclosure was in fact not material. A new trial should be ordered to give the defendant an opportunity to make such inquiry.

4. The defendant moved for a mistrial when the prosecutor asked a question concerning Paul Vario, indicating that the defendant must have had evidence of Mr. Vario's guilt because he had been indicted. (See testimony 5/13/76 at 702 et. seq.) This court denied that motion and attempted to give a cautionary instruction (p. 706).

Thereafter the prosecutor again in discussing the defendant's relationship with Mr. Harold Lipset, the private investigator, involved in the jail investigation questioned the defendant in such a manner that indicated that an indictment was evidence of guilt (i.d. at 835 et. seq.) In spite of Your Honor's personal belief that such is the case as was indicated to the defendant (i.d. at 705) it is submitted that the prosecutor's conduct re-emphasized the highly prejudicial concept that an indictment is evidence of guilt which could not be erased from the minds

of the jury by any cautionary or other instruction.

As was stated in Maestas v. United States, 341 F.2d 493, 496 (10th Cir. 1965):

> "The question of whether to declare a mistrial is of course a matter within the discretion of the lower court since it is in a better position to judge the effect which incompetent evidence might have upon the jury. Also, it is the general rule that error in the admission of evidence under most circumstances may be cured by withdrawing the evidence from the jury's consideration and instructing the jury to disregard it. Holt v. United States, 94 F.2d 90 (10th Cir.). However, as an exception to the general rule, where the character of the testimony is such that it will create so strong an impression on the minds of the jurors that they will be unable to disregard it in their consideration of the case, although admonished to do so, a mistrial should be ordered. Holt v. United States, supra; Marshall v. United States, 360 U.S. 310, 79 S.Ct. 1171, 3 L.Ed.2d 1250; United States v. Jacangelo, 281 F.2d 574 (3rd Cir.)."

See, also, United States V. Rinaldi, 301 F.2d 576 (2d Cir. 1962); United States v. Gray, 468 F.2d 257 (3d Cir. 1972); United States v. Smith, 403 F.2d 74 (6th Cir. 1968); Lawrence v. United States, 357 F.2d 424 (10th Cir. 1966).

It is, of course, "impermissible for a jury to infer guilt from the fact of an indictment." United States v. Pandilidis, 524 F.2d 644, 648 n.5 (6th Cir. 1975), cert. denied, ___U.S.___. It is submitted that the prosecutor's suggestion that the defendant should have conducted himself as if an indictment constituted a conviction was highly prejudicial and falls into that type of evidence which should never have been heard by a jury nor even touched upon by the prosecutor. This inquiry is so vital to the

Constitutional rights of defendant and so important to the concept of a fair trial that it is submitted once again that a mistrial should have been granted immediately.

5. The defendant was never given a full opportunity to investigate and reveal, both to the court and the jury, the motives and factual background concerning this prosecution. It became apparent this investigation was commenced during a political campaign and that the prosecutor attempted to gather information prior to Election Day, no matter what inconvenience to the sources of information. The prosecutor was formerly a staff member under the defendant's political opponent. Upon information and belief, the prosecutor became financially involved in the defendant's opponent's campaign. Now that the trial is over, official action has been taken by the County of Nassau to again reunite the prosecutor and the political opponent, this time in the office formerly headed by the defendant.

It is submitted that this situation should not have been tolerated by the court and should have been brought to the attention of the jury. It is submitted that the type of prosecutorial malice, present here, could have weighed heavily in the minds of the Petit Jurors in determining the defendant's credibility.

Moreover, the prosecutor's motivation should have been disclosed to the Grand Jury. A detailed analysis of the reasons for such disclosure is contained in United States v. DeMarco, 401 F.Sup. 505, 513, et.seq. (C.D.Cal. 1975, also discussed, supra,

Point I.) The failure to make such a disclosure totally frustrates the roll of the Grand Jury to protect an individual from malicious prosecution even where probable cause of a crime is present. The court also noted that such improper motives are relevant at trial. Moreover, while the court did not find a vindictive motive in DeMarco, it would not substitute its own findings for what might have been the determination of the Grand Jury. The court dismissed the indictment.

A new trial should be ordered in order to give the defendant an opportunity to appropriatelyresist prosecution on the ground that the prosecution was launched for unjustifiable pruposes. Moreover, the indictment should be dismissed.

6. On his rebuttal case, defendant requested to listen to a recording of a telephone call placed at the instance of the government between the defendant and an individual who identified himself as Sam Houston, Your Honor refused to order that the defendant be allowed to hear the tape of that telephone call.

The defendant, then, soughtto introduce the transcript of that tape furnished him by the government in an effort to demonstrate the existence of Sam Houston. The government refused to stipulate as to the authenticity of the transcript which it prepared from the tape which has always been in the government's control of the telephone conversation instigated by the government without the knowledge of the defendant and after he had been indicted. The only available

alternative to the defendant was for he, himself, to take the stand. However, after argument, Your Honor ruled that if the defendant took the stand, the government would not be limited on cross examination.

The defendant had been subjected to 3 days of examination and cross examination and Your Honor's ruling would have unfairly subjected the defendant to cross examination totally beyond the scope of rebuttal. It is submitted that in view of the fact that the existence of Sam Houston was so vital to the defense that Your Honor's ruling was both incorrect and highly prejudicial and kept from the jury evidence which could have been more favorable to the defendant's contention. Therefore, a new trial should be granted.

7. In defendant's requests to charge, it was not requested that any reference be made with respect to the defendant taking the stand on his own behalf. The defendant excepted to those additions to the charge not requested by the defendant. Nevertheless, Your Honor saw fit to charge the jury that the defendant did not have to take the stand but did not charge that a defendant's failure to take the stand is no evidence of guilt. To the contrary, Your Honor charged that in this case the defendant took the stand and emphasized that the defendant has more reason to "lie" than anybody else. It is submitted that this charge not only is highly prejudicial to the defendant but it is not necessarily true. The mere fact that as a matter of law a defendant is an

interested party does not give rise to more reason to lie than anybody else. In view of the fact that this request was not specifically made by the defendant and in view of the manner in which it was given, it is submitted that Your Honor's charge was plainly erroneous and most prejudicial to the defendant and mandates a new trial.

Further, Your Honor gratuitously characterized the government's witnesses as witnesses who would normally be expected to testify for the defendant. It is submitted that this charge is contrary to fact and wrong, and coupled with Your Honor's characterization of the defendant's testimony, highly prejudicial and violated the defendant's constitutional right to a fair trial.

8. Lastly, Your Honor permitted evidence to be brought before the jury as to the amount of money Harold Lipset, the private investigator, received for conducting the jail investigation. Your Honor received such testimony over the objection of the defendant in order to permit the prosecutor to ask whether or not the defendant received any part of Mr. Lipset's fee. It is submitted that such information could have been elicited without reference to the specific amount which Mr. Lipset received but the specific question was asked in order to inflame the jury and prejudice the defendant. Together with all of the other prejudicial matter brought before the jury, it is submitted that Your Honor's receipt of this evidence was erroneous and prejudicial, entitling the defendant to a new trial.

DEFENDANT'S MEMORANDUM

CONCLUSION

For the reasons herein above stated, a judgment of acquittal should be entered, or in the alternative the indictment should be dismissed, or alternatively, a new trial should be ordered.

Respectfully submitted,

WILLIAM CAHN
Attorney Pro Se
Office & P. O. Address
278 Old Country Road
Mineola, New York, 11501
(516-747-7616)

CORRECTION

The 11th paragraph of the digest of opinion in Houston Chronicle Publishing Co. v. City of Houston, 18 CrL 2302, contains two typographical errors and an incomplete sentence. The fifth full paragraph on page 2303 should read:

With respect to the Offense Report, it seems to us that these legitimate competing interests can be reconciled by the finding of a constitutionally protected right of the press and public to the front page (or an exact copy thereof) of the Offense Report structured to include the offense committed, location of the crime, identification and description of the complainant, the premises involved, the time of the occurrence, property involved, vehicles involved, description of the weather, a detailed description of the offense in question, and the names of the investigating officers. The disclosure of this information, to which the press is entitled as a matter of constitutionally protected right, will not preclude the press from interviewing the investigating officers and otherwise seeking additional information concerning a newsworthy crime. Along with the other records held in this opinion to be public records under the Open Records Act, the activities of the City of Houston law enforcement agencies will be open to public scrutiny. This constitutional right of access to information should not extend to such matters as a synopsis of a purported confession, officers' speculations of a suspect's guilt, officers' views as to the credibility of witnesses, statements by informants, ballistics reports, fingerprint comparisons, or blood and other laboratory tests. To open such material to the press and public in all cases might endanger the position of the State in criminal prosecutions by the use of such materials to the disadvantage of the prosecution. To have such material open to the press and public in all cases might reveal the names of informants and pose the threat of intimidation of potential prosecution witnesses. In any case, the press has available effective means of finding out most of such details through interviews with the participants, officers, and witnesses. * * *

The second paragraph from the bottom in the left column on 19 CrL 2012 also contains a typographical error. That paragraph should read:

The legal process can survive only so long as it has the respect and support of the people it serves. A felony trial in which a defendant is representing himself is a veritable breeding ground for interruptions, disruptions and endless admonitions to the jury to disregard improper questions or statements by the defendant (which he may honestly not realize are improper). In addition the trial judge is further burdened by the inevitable role of law-teacher which is thrust upon him.

DECISIONS IN BRIEF

The cases digested below have been selected as worth reporting but are considered suitable for abbreviated treatment. Texts of these decisions are available for loan to any subscriber on request.

DOUBLE JEOPARDY — MISTRIAL DECLARATIONS — MANIFEST NECESSITY

A sua sponte mistrial declaration, entered early in a trial for the purpose of protecting a defendant against his counsel's increasingly apparent incompetence, does not raise a double jeopardy bar to a retrial, the U.S. District Court for Southern New York rules. "Once it became clear to us that the lawyer assigned by the magistrate to represent this indigent defendant was too inexperienced, unprepared, and incompetent to present defendant's case to the jury, it became our plain duty to abort the trial. * * * This court's declaration of a mistrial does not bar retrial of the defendant. Substantial harm could result if, because of the double jeopardy clause, a court felt compelled to allow a trial to continue although the accused was not adequately represented. * * * Defendant contends that our failure to use a lesser sanction constitutes an abuse of discretion. It is sufficient, however, that the trial judge had reasonable grounds to believe that justice would not be served by continuing the trial, and it is immaterial that with flawless hindsight less drastic means may appear to have been sufficient to cure the defect. Moreover, no feasible alternative was available. * * * Defendant's suggestion of a continuance until new counsel could be appointed ignores the difficulty in finding substitute counsel, giving him sufficient time to prepare, and scheduling the resumption of trial amidst a congested calendar and at a time when the original jury and alternates could return." (U.S. v. Williams; USDC SNY, 3/18/76)

DUE PROCESS — HARSHER INDICTMENT FOLLOWING VACATION OF GUILTY PLEA.

A defendant who obtained vacation of his guilty plea on appeal was denied due process by his subsequent prosecution on charges more serious than those in his original indictment, the Fourth Circuit holds, applying North Carolina v. Pearce, 395 U.S. 711, and Blackledge v. Perry, 417 U.S. 21, 15 CrL 3097. "The government argues that Blackledge and [U.S. v.] Jamison [, 505 F.2d 407, 16 CrL 2092] are distinguishable because in each the prosecutor knew of the offense charged in the second indictment at the time the original charge was made. Here, in contrast, the United States Attorney avers that he did not know of the crimes charged in the second indictment when the first indictment was returned. * * * We believe, however, that Blackledge does not limit the application of the due process clause to the narrow bounds suggested by the government. The reference to the return of the indictment as the time for assessing the prosecutor's knowledge does not imply that some other date might not be equally critical, and the opinion does not attempt to catalog all tactics that may engender apprehension of prosecutorial vindictiveness. Rather, Blackledge unequivocally assures a prisoner of his right to appeal without fear that the prosecutor will retaliate with a more serious charge if the original conviction is reversed. * * * The record * * * does not support a conclusion that the prosecutor maliciously sought the second indictment, and we accept his explanation that he obtained it simply to create a stronger case for the government. Blackledge points out, however, that the accused need not prove he was an actual victim of retaliation." (U.S. v. Johnson; CA 4, 3/31/76)

ENTRAPMENT

Observing that "no Arizona court has previously had occasion to make a choice between the opposing

1950

DEFENDANT'S MEMORANDUM

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Appellee,* vs. BERNARDINO RUESGA-MARTINEZ, *Appellant.*	No. 75-3660 OPINION

[April 22, 1976]

Appeal from the United States District Court
for the Central District of California

Before: ELY and TRASK, Circuit Judges, and
VAN PELT,* District Judge.

ELY, Circuit Judge:

Ruesga-Martinez appeals his conviction on a two-count felony indictment charging him with unlawful entry and reentry into the United States in violation of 8 U.S.C. §§ 1325 and 1326. We reverse.

On August 13, 1975, the appellant was arraigned before a magistrate on a complaint charging him with unlawful entry in violation of 8 U.S.C. § 1325. Section 1325 provides that first offenders are guilty of a misdemeanor, punishable by imprisonment of not more than six months, or by a fine of not more than $500, or both. Multiple offenders are guilty of a felony, punishable by imprisonment for a maximum of 2 years and a maximum fine of $1,000. Although the prosecution was aware that appellant was a multiple offender, it chose to charge him with a misdemeanor before the magistrate.

*Honorable Robert Van Pelt, Senior United States District Judge, Lincoln, Nebraska, sitting by designation.

DEFENDANT'S MEMORANDUM

United States of America vs.

Appellant pleaded not guilty to the charge. Thereafter, he refused to sign a document that would have constituted a waiver of his right to be tried by a district judge and any right that he might have had to a jury trial. The magistrate then ordered the United States Attorney to file an information against appellant in the District Court. On September 2, 1975, appellant was arraigned on a two-count indictment charging him with a felony violation of 8 U.S.C. § 1325 as a multiple offender and with violating 8 U.S.C. § 1326, which provides that a deported alien who reenters the United States unlawfully commits a felony. Appellant entered not guilty pleas to both counts and moved to dismiss the indictment on grounds that the increase in the severity of the charges against him violated his constitutional due process rights under the Fifth Amendment. The motion was denied, whereupon the appellant waived a jury trial and was found guilty by the District Court on a set of stipulated facts. The District Court imposed sentences of eighteen months imprisonment on each count, the sentences to run concurrently.

In *North Carolina v. Pearce*, 395 U.S. 711 (1969), the Supreme Court examined the issue of whether a trial court can impose a more severe sentence upon retrial and reconviction after an accused has successfully challenged his first conviction on appeal. The Court held that, although heavier sentences are not absolutely prohibited, due process requires that the reasons for imposing such sentences upon retrial must affirmatively appear so that an accused may be free, when taking an appeal, of any apprehension of subsequent retaliatory or vindictive sentencing because of his successful appeal. 395 U.S. at 725-26.

In *Blackledge v. Perry*, 417 U.S. 21 (1974), the Supreme Court extended the rule in *Pearce* to protect the accused against the apprehension of prosecutorial vindictiveness. In *Blackledge* the accused, Perry, was initially charged with a misdemeanor assault with a deadly weapon for an altercation with another inmate that occurred while Perry was in prison. Perry was convicted in an inferior court in North Carolina and given a sentence of six months confinement, this sentence to be served upon the completion of the prison term he was then serving. Perry chose to exercise his right under North Carolina law to a trial *de novo* in the Superior Court. Prior to the trial *de novo*, the prosecution obtained an indictment charging Perry with a felony for the same

acts for which he had previously been charged with a misdemeanor. The net result was an increase of eleven months in Perry's sentence. The Supreme Court held that, when the circumstances "pose a realistic likelihood of 'vindictiveness,' . . . . due process of law requires a rule analogous to that of the *Pearce* case." 417 U.S. at 27. Thus, even though there was absolutely no evidence of vindictiveness in the record, the Court held that it was constitutionally impermissible for the prosecution to bring the more serious charge against Perry after he had exercised his statutory right to appeal.

Pearce and *Blackledge* therefore establish, beyond doubt, that when the prosecution has occasion to reindict the accused because the accused has exercised some procedural right, the prosecution bears a heavy burden of proving that any increase in the severity of the alleged charges was not motivated by a vindictive motive.[1] We do not question the prosecutor's authority to bring the felony charges in the first instance (*see United States v. Brown*, 482 F.2d 1359, 1360 (9th Cir. 1973)), nor do we question the prosecutor's discretion in electing which charges to bring against a particular defendant (*see Spillman v. United States*, 413 F.2d 527 (9th Cir.), *cert. denied* 396 U.S. 930 (1969)). But when, as here, there is a significant possibility that such discretion may have been exercised with a vindictive motive or purpose, the reason for the increase in the gravity of the charges must be made to appear.

We do not intend by our opinion to impugn the actual motives of the United States Attorney's office in any way. But *Pearce* and *Blackledge* seek to reduce or eliminate apprehension on the part of an accused that he may be subjected to retaliatory or vindictive punishment by the prosecution only for attempting to exercise his procedural rights. Hence, the mere *appearance*

---

[1]There can be no question that the change in the present case from a one-count misdemeanor complaint to a two-count felony indictment constitutes an increase in the charges against appellant. We therefore need not decide how much of an increase is necessary before *Pearce* and *Blackledge* apply. We do note that the Court of Appeals for the District of Columbia has suggested that the rule in *Pearce* should apply even "where the only *possible* prejudicial effect of the charge increase [is] minimal." *United States v. Jamison*, 505 F.2d 407, 415 (D.C. Cir. 1974) [emphasis in the original].

BEST COPY AVAILABLE

of vindictiveness is enough to place the burden on the prosecution. When the appellant in the present case refused to sign the waiver form, the ensuing increase in the severity of the charges against him created a sufficient appearance of vindictiveness to bring the principles of *Pearce* and *Blackledge* into application.

On the record before us there is absolutely no evidence that justifies the increase in the charges brought against appellant.[2] The prosecution attempts to justify its conduct by emphasizing that there was more than ample evidence that appellant was a multiple offender. This does not in itself justify an increase in the severity of the charges in the second proceeding because that evidence was known to the prosecution before it brought the original lesser charge. *United States v. Gerard*, 491 F.2d 1300, 1304-07 (9th Cir. 1974)[3] In the present case the only new facts alleged in the felony indictment were appellant's previous arrest, conviction, and deportation. There can be no doubt that such facts were known to the prosecution before it instituted the

---

[2]The prosecution cites *United States v. Preciado-Gomez*, ___ F.2d ___ (9th Cir. Jan. 14, 1976), for the proposition that the absence from the record of any evidence of vindictiveness is enough to justify an increase in the severity of the charge. However, the *Preciado-Gomez* court expressly pointed out that any attempt "to retry the appellant, seeking a heavier penalty *for the same acts* as originally charged, is inherently suspect, and in such cases the burden is justifiably placed on the government to show a valid reason (such as newly discovered evidence of other acts) for an increase in punishment." ___ F.2d at ___ (slip op. at 6) [emphasis in the original]. Here, the new charges against appellant were undeniably predicated upon the same acts as those specified in the original complaint. It is also noteworthy that in *Preciado-Gomez* there was some doubt about whether the prosecution had all of the facts before it at the time of the original indictment. ___ F.2d at ___ (slip op. at 7-8). There is no such doubt in the present case. Hence, we do not view *Preciado-Gomez* as controlling in the present context except insofar as it characterizes similar prosecutorial conduct as "inherently suspect."

[3]In *Gerard* the court ordered the District Court to dismiss a new count charging the appellant with carrying a firearm during the commission of the crimes charged in the original indictment. The court held that it was not enough that there was ample evidence that the appellant had in fact used a firearm since that evidence was known to the prosecution from the outset.

original complaint.[4] That the matter was handled by an inexperienced prosecutor, as argued at oral argument by the Government's appellate counsel, is, of course, no acceptable excuse whatsoever.

The prosecution further argues that *Pearce* and *Blackledge* do not apply because appellant was not entitled to a jury trial in the misdemeanor proceeding. It argues that since appellant had no right that could be waived, there was no right to be protected against the threat of vindictive prosecution. This argument is without merit. *Pearce* and *Blackledge* apply regardless of whether the accused asserts a constitutional right, a common law right, or a statutory right, and it is clear that appellant originally possessed, at the very least, the statutory right to be tried by a district judge rather than a magistrate. 18 U.S.C. § 3401(b)[5]. In *Blackledge* the right protected was a right to a trial *de novo*, created by statute, and in *Pearce* the Supreme Court expressly declined to confine its holding to protecting the assertion of constitutional rights. 395 U.S. at 724. Therefore, in the present case appellant was entitled to exercise his right to be tried by a district judge[6] without fear that the prosecutor

---

[4]Since the record in our present case is devoid of any new relevant evidence, there is no need to speculate on the sort of evidence that might justify an increased charge. The Supreme Court has made it clear that *Pearce* and *Blackledge* would not apply if the prosecution could show that it was impossible to proceed on the more serious charge in the beginning. For example, if the victim of an assault has died since the return of the first indictment, a subsequent indictment may properly charge the accused with murder rather than assault. *Blackledge*, *supra*, 417 U.S. at 29 n.7. It has also been suggested that when the prosecution, through no fault of its own, was unaware of facts required for an indictment for the more serious charge, the increased charge may be justified after the prosecution has learned of the new facts. *See Jamison*, *supra* note 1, 505 F.2d at 416-17.

[5]Hence, we need not now decide whether, as appellant contends, he was constitutionally entitled to a jury trial.

[6]It is of no consequence that appellant exercised his statutory right to be tried by a district judge at the outset of the proceedings against him rather than challenging his conviction on appeal as did the defendants in both *Pearce* and *Blackledge*. These cases have never been so confined. *See Jamison*, *supra* note 1, 505 F.2d at 416 (retrial after a successful motion for a mistrial); *Gerard*, *supra*, 491 F.2d at 1304-07 (retrial after guilty plea withdrawn).

might retaliate by substituting a more serious charge for the misdemeanor charged in the original complaint.

Finally, the prosecution contends that it was entitled to bring the more serious charges as a consequence of its authority to engage in plea bargaining. *Cf. Brady v. United States*, 397 U.S. 742, 751 n.8 (1970). We cannot agree. Although this court has consistently reaffirmed the right of the prosecutor to bring a heavier charge in the event that the accused reneges on his bargain (*see United States v. Preciado-Gomez*, ... F.2d ....., ... (9th Cir. Jan. 14, 1976) (slip op. at 6); *Gerard, supra*, 491 F.2d at 1305-06), no plea bargain was entered into in the present case. Moreover, in view of the clear mandate of *Pearce* and *Blackledge*, we find no merit in appellee's suggestion that the power of the prosecution to adjust the charges against an accused at will inheres in its power to engage in plea bargaining.

The judgments of conviction are reversed, and upon remand the District Court will dismiss the indictment.

REVERSED AND REMANDED.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 4 27 76 100

1956

DEFENDANT'S MEMORANDUM

UNITED STATES DISTRICT COURT

Memorandum

TO : Chief Judge Mishler DATE: March 23, 1976

FROM : Judge Dooling

SUBJECT: United States v. Cahn, 75 CR 645(s)
Cahn v. Levi, et al., 76 C 512

I have concluded that I should disqualify myself in the two Cahn cases, and I request that they be assigned to another judge under the random selection system.

The rulings on evidence and on substantive principle made during the trial and the pre-trials and on the motions made during trial, and the view taken of the major bodies of evidence in framing the charge, seen in relation to the superseding indictment, signify to me that it would be undesirable for me to be the judge on the superseding indictment, and I am unwilling to essay it.

The civil case involves (inter alia) matters brought up in and made the subject of limited pre-trial rulings in 75 CR 645. It has been treated by the Clerk as a related case to 75 CR 645. I am informed that neither party suggested that treatment to the Clerk.

John M. Dooling

U. S. D. J.

Copies to All E.D.N.Y. Judges

DECISION ON MOTION TO SET ASIDE VERDICT AND MINUTES OF SENTENCE.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 16 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA.,

- against -

WILLIAM CAHN,

Defendant.

75 CR 645(S)

----------x

United States Courthouse
Brooklyn, New York

July 2, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD., U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

RAY STALKER
ACTING OFFICIAL COURT REPORTER

APPEARANCES:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: James O. Druker
Assistant U.S. Attorney

FOR DEFENDANT:

Neal Cahn and William Cahn (pro se).

THE CLERK: Criminal cause for sentence 3
United States of America against William Cahn.

THE COURT: Good morning, Mr. Druker, Mr. Cahn and Mr. Neal Cahn.

THE DEFENDANT: Good morning, Your Honor.

MR. N. CAHN: Good morning.

THE COURT: I have some motions by Mr. Cahn which I think I ought to hear first.

MR. N. CAHN: Your Honor, I believe the motion was duly noticed. We haven't received any reply. I will ask that you grant the motion.

THE COURT: Well, the motion is primarily a repetition and I thought for the record that I passed on them during the trial.

MR. N. CAHN: I don't believe the first point was really discussed at all.

THE COURT: Mr. Druker, have you any answering papers on the first point?

MR. DRUKER: No, Your Honor. Just briefly, it is the Government's position at this point there is no merit. I might say most of it is moot by the previous stated policy of giving concurrent rather than consecutive on multiple counts.

Secondly, I think it is obvious and it is the Government's position the defendant didn't exercise any

right or become prejudiced by the fact that there was a hung jury and the Government rendered a superseding indictment.

Thirdly, based on thedefendant at the first trial, there was a rationale basis for the Government's superseding as it did.

I think the Pearse case which is analogous with a heavier sentence after a retrial are not opposed here.

THE COURT: Certainly, Mr. Cahn, the Pearse case as Mr. Druker sees it, there was a trial, a sentence, a retrial, and a higher sentence. That was held to be improper.

MR. N. CAHN: Yes.

THE COURT: Here we have a trial, an abortive trial because it ended in a disagreement. Then a superseding indictment and I really don't see that any of your cases read on that situation.

MR. N. CAHN: Well, there is one case cited, I believe, Jamison, 505 at 407, discusses increased action by the prosecutor after a mistrial. Even where that mistrial was occasioned by the act of the defendant. Pearse is simply the background case. The cases I'm speaking about concern the prosecutor and I believe they started with Blackledge.

THE COURT: Well, the Jamison case was in the

District of Columbia Circuit and I don't think that 5
is really binding on us up here.

MR. N. CAHN: Your Honor, none of the cases cited are in the Second Circuit. Every case that I have foun since Blackledge has been consistent where any action taken by a prosecutor after some circumstances which call for a new trial which increases the burden to the defendant in any way, the courts have uniformly dismissed any increased action, whether it be an additinal count, higher charges, anything at all. They have continuously rejected excuses.

I don't think any excuse here is applicable.

Here the Government had all the facts prior to the first indictment.

Secondly, I don't believe there is in fact prejudice in this case by the superseding indictment. That is excused in the papers.

Thirdly, I believe the -- a defendant putting in a defense is an exercise of his rights. That exercise of his rights resulted in a mistrial. The Government took a total unfair advantage of that mistrial.

THE COURT: Well, the Government could have indicted him on the other charges after an acquittal. There was a five year statute of limitations.

An acquittal on a transaction that took place in

1969 would not prevent indictment for something that took place in 1970.

MR. N. CAHN: Your Honor, we have never briefed that point. That issue has never come up and I submit there is strong authority they could not have indicted him following an acquittal.

MR. DRUKER: At any rate, Your Honor, ma I say this so the Court has the proper background; the Government I think, was aware of some 53 double billings of the first trial. The defendant contended in the Grand Jury that 46 of them, the monies generated thereby were used to pay an informant. He had not accounted for the proceeds in the other seven. So, he was indicted on those seven.

Then he came in on trial and said, "Well, those seven I used that money to pay to the informant too."

At this point we figured, well, let's just indict him, reindict him for all of them and let the chips fall where they may rather than trying to take him at his word on any of these 46, even though we considered the defense to be irrelevant as to those 46, that's how the new indictment came about. I think Your Honor is familiar with the rest from there.

MR. N. CAHN: Your Honor, first the defendant at no time made any division that some monies went to some

informant and some monies didn't. It always has been the defendant's position that all monies received, from whatever the process is being called, went to the informant.

Secondly, the Government now says the defense of the informant was irrelevant. So there is no reason to put it in in the first place.

Thirdly, when we got to trial on the first one, it was the Government who first mentioned the informant and brought it into the case. If these are excuses they don't --

MR. DRUKER: These aren't excuses, they're legal reasons for legal proper action and we will rest on that, Your Honor.

THE COURT: Well, I don't see any reason why, within the period of the statute of the limitations, the Government can't bring other charges which have not been tried, so I deny the motion on that ground.

MR. N. CAHN: Your Honor, I think the 6 or 7 cases that I have cited, every case that I have read since Blackledge says where the Government makes a choice and returns an indictment or information and something happens, it gives rise to a new set of circumstances, and the Government takes advantage of that without a good excuse for bringing it in in the first place, but we're supposed

to bring it in now. They have said, whether it is the statute of limitations or not, it is simply an unfair burden and violates due process.

Those are what the cases say.

THE COURT: I don't read them that way, sorry. As to the weight of evidence, I think that was determined by the jury. I think your other points relate to the question of other similar acts on which I ruled. That is the last point?

MR. N. CAHN: We have eight distinct, I believe there are eight distinct issues. Only one of which is the prior similar acts.

THE COURT: What are your eight distinct issues, the Hawaii trip or the Puerto Rico trip and --

MR. N. CAHN: That's all the first one.

THE COURT: I'm not sure what you are referring to?

MR. N. CAHN: The first issue in that last point is the prior similar act.

THE COURT: Yes.

MR. N. CAHN: The second issue is the double and triple entrances which Your Honor admitted into evidence or allowed to be taken.

THE COURT: You mean all the arguments that you have --

MR. N. CAHN: The eight different issues, only one is a prior similar act. The third one, you did not allow the defendant to ask each of the victim s whether they would have paid him if he had disclosed this fact.

The fourth one deals with two instances in which the prosecutor let go to the jury inferences that indictments were evidence or tantamount to guilt.

The fifth, the fifth instance --

THE COURT: I ruled on the evidence matter already.

MR. N. CAHN: The fifth instance is Your Honor's--

THE COURT: I gave a cautionary instruction on the indictment, which you say was inadequate. But you can't change that.

MR. N. CAHN: The fifth issue is, Your Honor refused to allow us to go into at least two investigations or to determine whether it was fully disclosed to the Grand Jury the motivation behind this prosecution.

The sixth case concerns the phony telephone call by the Government after the defendant was indicted.

The seventh is Your Honor's charge concerning --

THE COURT: I don't see the telephone call had any relevance to this case.

MR. N. CAHN: Your Honor, it is admitted that the transcript shows when -- I believe at 11 11:30 at

night when the defendant was in bed, he received a call from a person who identified himself as Sam Houston. I believe the response is, and I submit it should have been left to the jury, the responses show that there is in fact a person by the name of Sam Houston, because of the fact this particular Sam Houston did not know the code word that my father and Mr. Houston agreed upon. The caller hung up.

I think that the fact that the Government attempted to trap the defendant and failed is also evidence of the existence of Sam Houston. Moreover, Your Honor, did not allow the jury to listen to the tape itself.

MR. DRUKER: That I believe is inaccurate. From the time that the tape was revealed, I think on that day, Mr. Klien was afforded and took an opportunity to listen to the tape and the defense was provided with a transcript. There was never any refusal by the Government to allow him to hear it.

In fact, the Government on repeated occasions offered a duplicate tape. If the defendant considered them important -- the defendant never asked.

I might say in that regard, it is erroneous; the defendant contends that the tape is exculpatory, while in an unrelated or possibly related matter, he contends to making his violative of his rights.

THE COURT: It could be both, but I ruled on that. I don't think that his basis for changing the verdict. 11

MR. N. CAHN: And the last point in that point concerns the admission of what we consider highly prejudicial irrelevant elements concerning the jail investigation.

MR. DRUKER: Those were excluded by the court. The Government offered -- asked the questions and they were excluded. I believe again the jury was cautioned that the questions are not evidence and only answers are.

THE COURT: There are a lot of points, but I don't think that they represent a major prejudice and I am going to deny the motion.

MR. N. CAHN: Thank you, Your Honor.

THE COURT: Now, Mr. Cahn, I received more than 75 letters describing your distinguished public service that respected people in all walks of life hold for you. Many were from distinguished people and many from common people.

I have read them all and I haven't been able to acknowledge them because we do not get extra secretarial help on a Federal level.

You may inspect them if you want and if you want to write thank yous to the letters for people who have

written for you. I also looked through -- presentation that was made in connection with an award that was given to your office. I presume you would want that back to keep as a momento of happier times.

I have also read affidavit by Dr. Sorley which attributesor claims to have developed the facts in the case himself after he was arrested when he tried to file a complaint in your office. We have a situation where I'm faced with a jury verdict that found you guilty. They heard you and they rendered their verdict. I have to interpret it as a number of serious lapsesin another wise brilliant record.

I have received a letter from the United States Attorney recommending imprisonment. I presume you have seen that letter?

THE DEFENDANT: No, sir, I have not.

THE COURT: I thought a copy was directed to you.

MR. DRUKER: It was, Your Honor.

THE COURT: It is dated June 30th. I will give you a moment to read if you want. I am not going to be bound by it.

(Short pause.)

THE COURT: I'll let you speak about that in a moment. Hold on to it if you want. I have also received your letter concerning inaccuracies and innuendos in the

presentence report.

There are frequently a lot of statements in presentence reports which go beyond facts in the record and frequently beyond what I think is necessary to consider in connection with sentence. I certainly don't give them all equal weight.

In this case as far as sentence is concerned, I am not concerned with whether you were a habitual gambler or not. I'm not concerned with the nature of your investigation of the Nassau County jail or your selection of investigators or attorneys. I will assume that there is nothing wrong what you did in that connection.

I am not concerned with whether you charged for any entertainment of witnesses, that wasn't actually provided. That is not part of the charge here. I am not even concerned with whether you gave more than one explanation for double billing which forms the basis of the indictment.

The significant facts I am familiar with, Federal financing for travel expenses for which you were also billing the County of Nassau and did not disclose that you were also being paid expenses by the County, even though you were using County money to pay to Sam Houston. I'm not concerned with whether or not Sam Houston in fact gave you useful information. I am trying to confine

my views on the sentence to the charges and the verdict, giving consideration to the record you have had before.

Now, you can speak both as lawyer and as a defendant.

THE DEFENDANT: Your Honor, it had been my intention to remain silent at this time. It was my intention to do so, for I felt that any statement of mine at this time, under all of thecircumstances, would be an exercise in utility. I felt that way because of two specific reasons:

First, any attempt to describe to Your Honor the pain and the hurt that is already mine and my family's would be far beyond the competence of rhetoric. It defies description.

Secondly, to plead that Your Honor be merciful, because I am deserving of mercy, always seems to be somewhat ludicrous, for if mercy is deserving, it's no longer mercy. To plead for mercy on some other basis or for some other reason would, in my judgment, be a concession of guilt which in all good conscience I cannot and will not make.

I'm concerned, however, that my silence at this time would be taken by some as such a concession of guilt and therefore I appreciate the opportunity for these few words.

I know the onerous responsibility that is placed upon a judge when he is called upon to sit in judgment of his fellow man; because I have been associated with the profession of politics for well over twenty-five years. I am familiar withthe judicial selection process and fully recognize that ascendancy to the bench is by no means equal to compensation, nor does it automatically bestow upon an individual, who is selected, the power to solve the perplexing problem of what sentence to give to each defendant convicted of a crime.

I therefore also recognize that judges are mortals and therefore subject to human frailties and must, under the circumstances, respectfully confess to your Honor I stand before you somewhat apprehensive, concerned and fearful. Admittedly, these fears may be unjustified, but fearful just the same and what I believe to have been indication from Your Honor of certain prejudices harbored against all defendants who appear before Your Honor. Yourstatement to me during the course of the trial that Grand Juries do not indict without evidence of guilt in my humble judgment violates the very basic concepts of our criminal justice system.

Your recent reported comment to another defendant who stood before you for sentencing, that he was too straight a man to take thewitness stand in his own behalf

and lie, I have to confess both shocked me and is disturbing as an attorney. I would be most hesitant to advise a client, standing before you or before you for trial, to take the witness stand in his own behalf, fearful he would immediately be branded a liar.

I took the witness stand on my own behalf and I must state to Your Honor, once again, and emphasize that the testimony I gave was both truthful and sincere. I did not mind. I did not abuse the power of my office. I told the truth. What I did, I did in the belief that I was exercising a proper administrative function of the public office which I then held.

What I did, I did in the true belief that it would best serve the ends of justice. Your Honor, my people have been taught, " justice, justice thou shall pursue," and all of my life, all of my adult life has been dedicated toward that end, including the time and the act for which I now stand convicted.

Because of this I have developed and still maintain a higher regard for our entire judicial process. I recognize that it is far from perfect, but I have indeed been proud of my association with it.

I assure Your Honor, that although I know that my conviction is one of the mistakes in the system, a proof of the imperfection of the system, a mistake that I hope

fully believe will be soon corrected because of my faith in the system, because of my association with it and because of my knowledge.

I stand before Your Honor today and at this moment ready to receive your judgment and I pray to God that I can accept it with dignity and courage.

Thank you very much.

THE COURT: Very well, with respect to the statement that a Grand Jury doesn't indict without evidence, the bench book that I use whenever I am called upon to accept a waiver of indictment requires me to point out to a defendant that he cannot be charged with a felony unless he waives indictment or unless a Grand Jury finds him, by return of an indictment, that there is probable cause to believe that a crime has been committed and that the defendant committed it. I don't think Grand Juries should be charged with acting irresponsibly.

I equally charged that the fact that a Grand Jury has returned an indictment after hearing evidence, which is not subject to cross-examination, does not create any inference of guilt and that I have proceeded in that respect in this case. I think the circumstances of this case are such that the jury could perhaps have found you guilty without finding you guilty of perjury. There were legal questions as well as factual questions in here and

I'm not considering any, and I'm certainly not going to impose any penalty for taking the witness stand, which is your right to do.

You have been convicted of 45 counts of filing false statements or mail fraud, all in connection with travel expenses which were reimbursed to you by the County of Nassau and also reimbursed to you by the National District Attorney's Association or various other non-profit organizations.

Misrepresentations on travel vouchers are so common that they are colloquially referred to as "swindle sheets." In fact, I think both parties excused any prospective juror who had extensive experience in travel for his employer or any other organization. The frequency of misstatements concerning travel does not, however, excuse fraud in connection with the travel vouchers. Especially in the case of a public official it is necessary to impose high standards of honesty.

Your explanation that the monies which you received from double billings were used to pay an informant who dealt with you personally was presented to the Grand Jury under instructions which said that this was an important factor but not a decisive factor. I must proceed on the basis that the jury verdict is an official finding of fact unless it may be reversed for any error of mine

in the conduct of the trial or the instructions to the jury.

You have already suffered greatly, not only in anguish and expense, but also in the loss of your high position and the jeopardy to your professional career as a lawyer. The testimony of over 20 character witnesses and over 75 persons who have written tome attest that your reputation for truthfulness is good, and that your conduct with respect to the travel vouchers was an aberration in another wise honorable life, and one which I am confident will not be repeated.

(continued next page)

THE COURT: Nevertheless, I believe that the effective enforcement of our criminal law requires that people know that serious violations carry something more than the mere opprobrium and anguish of a conviction.

One purpose of imprisonment is to deter other people who may be tempted, even though it may not be necessary for rehabilitation of a particular offender.

Public respect for the law also requires that persons in high office and prominence not be treated more favorably than the lowly who may be guilty of similar offenses.

Another fact that I must consider here is that a sentence after trial is somewhat tentative because there is always a possibility of reversal and a new trial before another judge. Any sentence that I impose puts a ceiling on what any other judge can do if there is a third trial and another conviction, which different evidence.

After considering all the factors, I impose a sentence of a year and a day imprisonment, concurrent on Counts 41 to 44; I suspend the imposition of sentence on Count 46 with two years unsupervised probation after your release on the other sentence, and a fine of $2,500.00 applicable to all accounts and payable as the Probation Department may fine feasible.

As you know, you have a right to appeal, the notice of appeal to be filed within ten days, and you have the right to the assistance of court appointed counsel if you establish that you are without funds to prosecute the appeal. You have a period of 120 days after the conviction becomes final in which to apply for a reduction of sentence.

I recognize the tragic effect of your conviction and the events which led up to it. I would have been happy if the trial of the case had fallen into the hands of one of the other judges of the Court, but I have performed my duty as I have seen fit. I have had more than one personal friend sentenced to imprisonment and I have seen them return to the community and maintain the respect of their friends and recommence useful lives. If my sentence stands, I hope that that may also prove true for you.

I will grant a stay of execution pending ten days for the filing of an appeal and pending the appeal, if a notice of appeal is promptly filed.

MR. N. CAHN: Your Honor, at this time --

THE COURT: Yes.

MR. N. CAHN: I move to dismiss 75-CR-645.

THE COURT: The underlying indictment, it should be dismissed. It is superseded.

MR. N. CAHN: Thank you, Your Honor.

THE DEFENDANT: Thank you.

(Whereupon, these proceedings were concluded.)

JUDGMENT APPEALED FROM. _____ 1979

M'FILMED

United States of America vs.

United States District Court for

DEFENDANT: _____ EASTERN DISTRICT OF NEW YORK

WILLIAM CAHN DOCKET NO. ➤ 75CR-645(s)

JUDGMENT AND PROBATION/COMMITMENT ORDER AO 245 (Rev. 4)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date ➤ MONTH: July DAY: 2 YEAR: 1976

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☐ WITH COUNSEL pro se (Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

CLERK U.S.D.C. E.D. N.Y.
JUL 2 1976 ★
TIME A.M. .....

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of violating Title 18 U.S.C. §§ 1001 and 1341 in that from on or about the 14th day of September, 1969 to the 30th day of November, 1974, within the Eastern District of New York, the defendant did make false statements in applications for reimbursement in travel expenses and accommodations by stating that he was not receiving any reimbursement from any other sourse for the aforesaid expenses and that no other funds were available to reimburse him for that expense, and that he did induce another to make a false statement in an application for reimbursement in airfare expenses

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 1 year and 1 day to run concurrent on counts 1 through 44. On count 45, imposition of sentence is suspended and the defendant is placed on 2 yrs. unsupervised probation. The defendant is fined $2,500 to run concurrent on all counts. Execution of sentence is stayed 10 days pending filing of notice of appeal, and if a notice of appeal is filed execution is stayed pending appeal. On motion of Assistant U.S. Attorney Drucker the underlying indictment is dismissed.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JUL 2 - 1976 ★
TIME A.M. _____
P.M. _____

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☑ U.S. District Judge
☐ U.S. Magistrate

➤ _____

Date 7/2/76

1980 NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Appellee,

-against-

WILLIAM CAHN,

Defendant-Appellant.

75-CR-645 (S)

NOTICE OF APPEAL

- X

Defendant, William Cahn, has been convicted of 10 counts of violating 18 U.S.C. 1001 and of 35 counts of violating 18 U.S.C. 1341.

Defendant was convicted on May 31, 1976.

Defendant was sentenced on July 2, 1976.

On July 2, 1976, defendant's motion for judgment of acquittal, notwithstanding the verdict, or, in the alternative, motion for a new trial, was denied.

Defendant, William Cahn, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the judgment of conviction, the sentence, and the order denying his motion for judgment of acquittal or a new trial.

Dated: July 6, 1976

Yours, etc.

FARRELL, FRITZ, CAEMMERER & CLEARY, P.C.
Attorneys for Defendant-Appellant

By: John M. Armentano
John M. Armentano

Office & Post Office Address:
374 Hillside Avenue
Williston Park, New York 11596
Tel.: (516) 741-1111

1981

NOTICE OF APPEAL

TO: HON. DAVID TRAGER
United States Attorney
Eastern District of New York

CLERK
U.S. Dist. Ct. E.D. N.Y. (2)

375—Affidavit of Service

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES

VS

WILLIAM CAHN

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NY , ss:

BERNARD S. GREENBERG being duly sworn,

deposes and says that he is over the age of 21 years and resides at 162 E. 7th St NY, NY

That on the 1sty day of October, 1976 19 at

he served the annexed appendix; appellant's brief and exhibit volume upon

David Trager, U.S. Attorney, 225 Cadman Plaza, Brooklyn, NY 11201

in this action, by delivering to and leaving with said attorneys

two copies of the brief and appendix and one of the exhibit volume true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 1st day of October, 1976 19

Bernard S Greenberg

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

Services of three (3) copies of
the within
hereby admitted this
of , 197

Attorney for